United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL 74-1319

B
P/S

IN THE

United States Court of Appeals

For the Second Circuit

WESTINGHOUSE BROADCASTING COMPANY, INCORPORATED, KYW-TV,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

DIRECTORS GUILD OF AMERICA, INCORPORATED,

Intervenor.

On Petition to Review and Set Aside an Order of the National Labor Relations Board and Cross-Application for Enforcement of Same

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
JUL 3 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	PAGE
Chronological List of Relevant Docket Entries	1a
Petition For Certification of Representative	3a
Regional Director's Decision and Direction of Election	4a
Employer's Request for Review and Stay of Election	9a
Board's Telegram Denying Employer's Request for Review	21a
Tally of Ballots	22a
Certification of Representative	23a
Charge Against Employer	24a
Regional Director's Complaint and Notice of Hearing	25a
Respondent's Answer to Complaint	29a
Decision and Order of the National Labor Relations Board (4-CA-6581)	32a
Stenographic Transcript of Testimony at Hearing of June 5, 1972	43a
Stenographic Transcript of Testimony at Hearing of June 11, 1973	190a

TESTIMONY

PAGE

Witnesses for Petitioner

Richard Chauncey Pyle:
- Direct 54a
- Cross 82a
- Redirect 126a

James Gordon Schmidt:
- Direct 131a
- Cross 142a
- Redirect 150a, 154a
- Recross 152a, 159a

John Vincent Smith, Jr.:
- Direct 160a
- Cross 169a
- Redirect 172a

James Bernard Herring:
- Direct 174a
- Cross 181a

Ernest D. Ricca:
- Direct 194a
- Cross 195a

Witness for Respondent

David E. Salzman:
- Direct 197a
- Cross 249a
- Redirect 365a
- Recross 365a

EXHIBITS

For Respondent:

1—Chart Showing Organization of Television Station KYW-TV 370a

2—Daily Reports Submitted by Richard Pyle 371a

AFFIDAVITS

1. Affidavit of Matthew J. Broderick, Esq. 375a

2. Affidavit of David L. Trezise 377a

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Westinghouse Broadcasting Company, Incorporated/KTW-TV

Case Nos.: 4-CA-6581
4-RC-10351

4.30.73	Petition filed in 4-RC-10351
5.10.73	Regional Director's Notice of Representation Hearing, dated
5.17.73	Petitioner's letter requesting postponement of the hearing, dated
5.21.73	Regional Director's Order Rescheduling Hearing, dated
6. 5.73	Hearing Opened
6.11.73	Hearing Closed
7.23.73	Regional Director's Decision and Direction of Election, dated
8. 3.73	Employer's Request for Review and Stay of Election, dated
8. 7.73	Directors Guild of America's Statement of Opposition to the Company's Request for Review of Regional Director's Decision and Direction of Election, dated
8.21.73	Board's telegram denying Employer's Request for Review of Regional Director's Decision and Direction of Election, dated
8.22.73	Tally of Ballots issued
8.30.73	Regional Director's Certification of Representative, dated
9.25.73	Charge filed in 4-CA-6581
10.16.73	Complaint and Notice of Hearing, dated
10.26.73	Respondent's answer [1/]
11.29.73	General Counsel's Motion for Summary Judgment and for Issuance of Board Decision and Order (with attachments), dated
12. 7.73	Board's Order Transferring Proceeding to the Board and Notice to Show Cause, dated
12.12.73	Respondent's letter requesting extension of time to file Statement and Position in Opposition to General Counsel's Motion for Summary Judgment, dated
12.18.73	Directors Guild of America's letter Opposing Respondent's request for an extension of time dated
12.21.73	Board's telegram granting extension of time of Respondent's request, dated

1/ Petitioner herein was Respondent before the Board.

1. 4.74	Respondent's Opposition to General Counsel's Motion for Summary Judgment, dated
1. 7.74	Directors Guild of America's letter urging the Board to grant the General Counsel's Motion for Summary Judgment, dated
3.19.74	Decision and Order of the National Labor Relations Board, dated

3 a

Form NLRB-502
(11-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64-R002.14

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO. 4-RC-10351

DATE FILED 4-30-73

INSTRUCTIONS—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)
(Check one)

- [X] RC-CERTIFICATION OF REPRESENTATIVE—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] RM-REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- [ ] RD-DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- [ ] UD-WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- [ ] UC-UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees. (Check one) [ ] In unit not previously certified [ ] In unit previously certified in Case No. _____.
- [ ] AC-AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____.

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER: KYW-TV, Westinghouse Broadcasting Company
EMPLOYER REPRESENTATIVE TO CONTACT: Alan Bell, V.P. & Gen. Manager
PHONE NO.: 215 238-4700

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, State, and ZIP Code)
Independence Mall East / Philadelphia, Pennsylvania 19106

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.): Television Broadcasting Station
4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE: Television programs

5. Unit Involved (In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)
Included: All staff "Producer-Directors"
Excluded: All others

6a. NUMBER OF EMPLOYEES IN UNIT: PRESENT 5; PROPOSED (BY UC/AC) _____

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT? [X] YES [ ] NO
*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. [X] Request for recognition as Bargaining Representative was made on March 27, 1973 (Month, day, year) and Employer declined recognition on or about same date (Month, day, year) (If no reply received, so state)

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (If there is none, so state)
NAME: None
AFFILIATION:
ADDRESS:
DATE OF RECOGNITION OR CERTIFICATION:

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year): ---

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year): ---

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES ..... NO: X

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING? ---

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF ..... (Insert name), A LABOR ORGANIZATION, OF ..... (Insert address) SINCE ..... (Month, day, year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c) WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)
None			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

DIRECTORS GUILD OF AMERICA, INC. AFL-CIO
(Petitioner and affiliation, if any)

By: _____ Alan S. Gordon, Associate General Counsel
(Signature of representative or person filing petition) (Title, if any)

Address: 110 West 57th Street, New York City, N.Y. 10019. 212-581-0370
(Street and number, city, State, and ZIP Code) (Telephone number)

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

Exhibit No. 1

GPO 000 000

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WESTINGHOUSE BROADCASTING COMPANY, INC. 1/

Employer

and

Case No. 4-RC-10351

DIRECTORS GUILD OF AMERICA, INC.

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer. 2/

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. Petitioner seeks a unit composed of all staff producer-directors employed at television station, KYW-TV, located in Philadelphia, Pennsylvania. Employer contends that the petition should be dismissed because these employees are either supervisors or managerial personnel.

Employer, a Delaware corporation with its principal office in New York City, is engaged in the operation of broadcasting stations throughout the United States, including station involved in the instant petition. The station, under the overall direction of the General Manager, is divided into five departments, one of which is the programming department wherein the 5 staff producer-directors work. This department is headed by the Program Manager, David Salzman, and the Assistant Program Manager or Executive Producer, David Beddow. The producer-directors are supervised by both Beddow and Ronald Little, the Production Manager. 3/

1/ Name appears as amended at the hearing.

2/ Employer declined to stipulate that Petitioner is a labor organization because it is challenging the Board's determination that Petitioner is a labor organization in Directors Guild of America, 193 NLRB No. 103 which is presently before a U.S. Circuit Court of Appeals. In light of the Board's decision and the record evidence that this organization is created for the purpose of representing employees in the television industry in collective bargaining covering wages, rates of pay, hours of employment or conditions of work, I find and conclude that the Petitioner is a labor organization within the meaning of the Act.

3/ Employer contends that Beddow is the producer-directors' immediate supervisor. However, record evidence reveals that Little schedules and assigns the work to the producer-directors and is consulted by the producer-directors about production problems that may arise.

Producer-directors engage in both the preparation of television programming content (producing) and the technical aspects of broadcasting these programs (direction). Most are involved in more than one program. The programs upon which producer-directors work are primarily divided into news and public affairs.

Producer-directors in news programming function primarily in their "directing" capacity. A substantial amount of most producer-director's time is devoted to this type of programming. About 2 hours before the program is broadcast, the "news-editor" or "producer" for a particular news program supplies the assigned producer-director with a program format outlining what the program will include, i.e., the news stories, the order of presentation, and any films, pictures, or slides that will be used. This format is also distributed to the assigned production unit (cameramen, stage manager, prop-men, projectionist, video tape operator, audio man, etc.). Approximately one half-hour before broadcast the news editor gives the producer-director a script setting forth the final sequence of the program, the time, the dialogue to be spoken by the news casters (talent), and instructions as to the use of audio visual aids. The producer-director reviews the script with the news editor for any technical problems that may arise. He also checks to make certain that all assigned production unit technicians are present and that they have the proper slides, films, and audio cartridges. If there are any problems he reports them to the news editor.

Once the program starts the producer-director is stationed in the control room with the news editor where he operates the switcher or console. By the use of this device he controls the picture and sound which is being transmitted. For example, he may receive picture images from two cameras from which he chooses the picture to be transmitted in accordance with the directions in the script. During the course of the program he keeps in voice communication with the production unit technicians giving instructions as to what type of picture, sound or film they should present in keeping with the instructions given either in the script or by the news editor. Normally, he may not vary from the script unless instructed to do so by the news editor. Only the news editor can change the script when a program is running too short or too long. One producer-director estimates that 85% of his work time is spent in operating the switcher.

The duties of the producer-director in public affairs programs vary widely depending upon the particular program. In such programming the producer-director is not only engaged in his "directing" function but also in his "producing function". Most of these programs are in the form of panel discussions with the talent acting as a moderator. Little preparation is required for this type of program beside the process of securing guests. Most of these programs have no budget beyond the normal operational expenses involving broadcasting a program. The producer-director is not involved in the selection of the talent or production unit.

Typical of the duties and responsibilities of producer-director in this type of programming is found in the preparation and broadcasting of the new weekly children's program "Big Kid, Little Kid". This producer-director was chosen because of his past experience in a previous position. He made some suggestions about the original format planned by his superiors, Salzman and Beddow. Some were accepted and some rejected. In actual operation, he meets with the two hosts (talent) to discuss the content of forthcoming shows. He has never sought to override the opinions of the others, and does not believe he has the authority to do so. Prospective guests are located by him and the talent. The program does not have a budget beyond the fixed operational costs of producing the program. Talent prepare their own scripts based upon the above-mentioned factors. When the program is videotaped, the producer-director operates the switcher in the control room directing the production unit technicians to perform certain actions so that he can obtain the best artistic quality. Beyond these functions he has no control over the assigned production unit.

One producer-director spends most of his time preparing for a program editing film according to a script prepared by the host-producer. A film editor works with this producer-director and actually cuts and splices the film. In another instance,

a producer-director acts as a technical director for a public affairs program entirely prepared by an educational institution under the auspices of KYW-TV. He acts as a liaison between the station and the institution's producers securing for that producer technical equipment required to produce shows.

Employer contends that the producer-directors responsibly direct unionized technicians in the production unit. The record does not substantiate this. No producer-director has the authority to hire, fire, grant wage increases or time off, adjust grievances, or in any other way affect these employees' working conditions. Assignments of production unit technicians to particular programs are made by the Production Manager. Employer argues, however, that the producer-director can change the technician job assignment. None of the testifying producer-directors was aware of this authority and none has exercised it. Indeed, the assignment made by the Production Manager specifies the jobs to be performed by the individual technicians. Only in emergency circumstances can a producer-director bar an employee from the studio, i.e., a drunk technician. Further, Employer contends that the producer-directors have the authority to direct production unit employees to work overtime. Record evidence establishes that under normal conditions producer-directors must get their superiors' approval to have production unit employees work overtime. In the unusual situation where the station's programs are running late because of some special program or event, he informs the technicians that they will have to work overtime.

Producer-director instructions to the technicians during the course of the program, (when he is not acting as a conduit for the news editor) are purely of an artistic nature and do not relate to the actual operation of the equipment or the manner in which the operations are to be carried out. They exercise no control over how technicians carry out their (producer-director's) general instructions. Further the vast majority of the technicians in the production unit are highly skilled (60-80% are paid the highest union scale). Moreover, most producer-directors earn between approximately $10-12,000 whereas most technicians are paid approximately $16,000. 4/ Consequently, I find no basis for the Employer's contention that producer-directors responsibly direct employees as defined by Section 2(11) of the Act. Employer further contends that the producer-directors effectively make recommendations about the technicians' performance which may cause disciplining or termination of probationary employees.

Only one of the four testifying producer-directors said he made reports about the performance of technicians. This producer-director had been requested to make written reports concerning errors that occurred in the technical presentation of news programs. As a consequence, he discussed the various abilities of the assigned production unit technicians. However, his requests that a particular camera man not be assigned to his program were not granted by his superiors. Further, the record establishes that at best the producer-director's opinion or recommendation is but one source of information considered by management in evaluating technicians. The evidence fails to establish that any technician has ever been discharged or disciplined solely on the basis of a producer-director's recommendation or complaint concerning his job performance. In these circumstances, I find that the producer-directors do not recommend effectively discipline or changes in the job status of employees.

Finally, Employer argues that producer-directors occupy a key position requiring considerable personal responsibility, individual initiative and good judgment. Further that the failure of the producer-director to perform his work can have disastrous consequences for the station since they have the last control over the program before it is transmitted. Although these employees may occupy key positions and have extensive discretion and personal responsibility, it extends only to their

4/ Two producer-directors are paid between $14 and 16,000. Little is paid between $12-17,000 and Beddow is paid $18,400.

own work product, and, not with respect to the direction or control of the activities of other employees. Therefore, this does not indicate supervisory authority. 5/

Based upon the foregoing and the record as a whole, I find and conclude that producer-directors do not responsibly direct employees or otherwise exercise 6/ or possess sufficient indicia of supervisory authority warranting a finding that they are supervisors as defined in the Act. Accordingly, they may constitute a unit appropriate for the purposes of collective bargaining. 7/

Employer contends in the alternative that the producer-directors are managerial employees. Producer-directors testified that they had been informed by their Employer that they are part of management. The discretion and responsibility which has been vested in the producer-directors referred to above relates to their ability to effectuate established and well-defined policies formulated by their superiors and none of the producer-directors has the broad authority to extend the Employer's credit. 8/

Based upon the foregoing and the record as a whole, I find and conclude that producer-directors are not managerial employees, and even if I were to find them to be managerial employees, they would be entitled to be represented under the Act unless there is some cogent reason for denying such representation. The record fails to reveal any such reason to deny them representation. Bell Aerospace Company, 190 NLRB No. 66.

5/ Employer introduced into evidence a somewhat unclear organization chart which showed lines of authority from the producer-director to the art department, associate producer-and assistant directors and the talent. Record evidence explaining the chart shows that: (1) the art department is under the direction of an art director and the national art director; (2) producer-directors are not involved in the selection of talent nor do they exercise control over their activities; and (3) the record is devoid of any information showing that there are individuals working in the position of associate or assistant producer-directors (all four producer-directors testified that there were no individuals working under them in that capacity.)

6/ The program manager testified that one producer-director, Susan Horowitz, hires a "staff" for the program which she produces-directs. However, the record indicates that her duties are the same as other producer-directors. Based upon the foregoing, I shall include her in the bargaining unit herein found appropriate.

7/ Employer cites two Board decisions, Westinghouse Broadcasting Company, Inc., 195 NLRB No. 63 (1972) and Westinghouse Broadcasting Company, Inc., 188 NLRB No. 24 (1971), and an RD's Decision (Case No. 20-RC-9664) involving other Westinghouse-owned television broadcasting stations. The two Board decisions are inapplicable to the present case since they involve the supervisory status of "news producers" who appear to perform similar functions to the individuals working for the Employer's television station in the instant case as "news editors". The RD's decision found producer-directors to be supervisors. Although the RD's decision has no precedential value, it is clearly distinguishable. In that case the producer-director had the authority to interview and hire talent, schedule working hours, grant time off, adjust grievances, and effectively recommend discipline and discharge. This authority is not present in the instant case.

8/ Only one producer-director was alloted a budget for a program. This budget of approximately $5,000 was expended primarily on paying guests for transportation costs and small honorariums for appearing on a daily "talk" show.

5. The following employees of Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All staff producer-directors employed at Employer's television station KYW in Philadelphia, Pennsylvania, but excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION 9/

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.10/ Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Directors Guild of America, Inc.

Dated July 23, 1973

At Philadelphia, Pennsylvania

Bernard Samoff, Regional Director for the Fourth Region
National Labor Relations Board

9/ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this decision may be filed with the Board in Washington, D. C. This request must be received by the Board in Washington by August 6, 1973.

10/ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236; N.L.R.B. v. Wyman-Gordon Company, 394 U. S. 759; decided April 23, 1969. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such a list must be received in the Regional Office, Suite 4400, William J. Green, Jr. Federal Building, 600 Arch Street, Philadelphia, Pennsylvania 19106 on or before July 30, 1973. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

CASE NO. 4-RC-10351

In the Matter of:

WESTINGHOUSE BROADCASTING COMPANY, INC.,
Employer

-and-

DIRECTORS GUILD OF AMERICA, INC.
Petitioner

EMPLOYER'S REQUEST FOR REVIEW AND STAY OF ELECTION

Employer, Westinghouse Broadcasting Company, Inc., hereby requests the National Labor Relations Board to grant review of the decision and direction of election filed by the Regional Director for the Fourth Region on July 23, 1973 and to enter an Order staying any election pending a determination on the merits. The employer makes this request pursuant to Section 102.67 of the Board's rules and regulations and sets forth in support thereof the following:

I. The Directors Guild of America, Inc. filed a representation petition seeking the right to represent the five producer - directors employed by Westinghouse's television station, KYW-TV located in Philadelphia, Pennsylvania. A representation

hearing was held on June 5 and 11, 1973. The employer's position at the hearing was that the producer - directors were either supervisory or managerial personnel and that the petition should have been dismissed.

II. The Regional Director in his decision found that the producer - directors were neither supervisory nor managerial employees and accordingly he directed an election which has been scheduled for August 22, 1973. (A copy of the Regional Director's decision and direction of election is attached hereto as Appendix "1").

III. Review should be granted since, as is set forth below is more detail, the Regional Director's decision departs from prior decisions of the Board, contains clearly erroneous factual conclusions which prejudicially affect the right of the employer, and ignores the basic policy of the Act concerning supervisory employees and managerial employees. In addition, the Regional Director did not perform his function of reviewing the record as a whole in this non-adversary proceeding; rather he virtually ignored the testimony presented by the Employer's Program Manager and ignored those portions of the testimony of the producer - directors which supports the Employer's position.

IV. The Regional Director's conclusion that the producer - directors are not supervisors is clearly erroneous and is not supported by the record as a whole. For example, the Regional Director recognized that producer - directors occupy key positions and have

extensive discretion and personal responsibility but then erroneously concluded that "it extends only to their own work product . . . ." (Decision, at pp. 3-4). The Regional Director's conclusion that producer - directors were not supervisors either ignored or failed to attribute adequate weight to the following evidence:

a. Producer - directors have always been considered a key component of the supervisory staff at KYW-TV; they have been told on many occasions that they are members of management and at no time did any producer - director object to his management status (N.T. 52, 101, 104, 131, 170-71).

b. Producer - directors are paid from the management payroll on a monthly basis like all other supervisory personnel and they are eligible to receive the same benefits received by all management personnel and this includes participation in the management - disability plan which is not open to non-supervisory personnel (N.T. 175).

c. In performing their directing function in both news and non-news programs, the producer - directors responsibly direct a crew, all of whom are unionized, consisting of from five to nine individuals including cameramen, audiomen, lightmen, stagemen and prop men and they instruct this crew what to do and when to do it (N.T. 183-85).

d. The supervisory status of the producer - directors is further confirmed by the following evidence:

(1) Producer - directors have the right to reassign members of the crew to perform various functions (N.T. 107).

(2) Producer - directors render reports on the performance of the crew (N.T. 209-210). The Company relies heavily on these reports in evaluating employees. For example, during a new employee's probationary period the comments received from the producer - directors concerning that employee are the principal factors utilized in determining whether to continue that employee as a regular employee (N.T. 206-07, 308, 315). Moreover, comments received from producer - directors concerning regular employees can and have resulted in employees' jobs being changed and employees being reprimanded (N.T. 190, 308).

The Regional Director stated that "The evidence fails to establish that any technician has ever been discharged or disciplined solely on the basis of a producer - director's recommendation or complaint concerning his job performance." (Decision, p. 3). This conclusion is wrong

because it ignores the uncontradicted evidence that in a number of instances technicians have been severely reprimanded or have been reassigned to other jobs based upon the comments and criticisms received from the producer - director (N.T. 308). In addition, by requiring that a recommendation be the sole basis for action, the Regional Director has ignored the phrase "effectively to recommend such action" contained in the Act's definition of the term "supervisor."

(3) Examples of comments made by producer - directors were introduced into evidence by the Employer. On one occasion a producer - director commented as follows:

> "Major crew problems again tonight. Lighting man, O'Connor, turned on so many lights that Vince couldn't see the stage manager. Andy McKay as stage manager . . . he just doesn't make it. He is so nervous out there that he puts everybody on the set on edge. Roland Barnes -- his second night as a cameraman. The poor guy cuts film till 10:45 p.m. (Granny series) and then busts downstairs to practice some as cameraman. He really tries hard but he can't do an adequate job with 15 min. practice. Dave Harrison was the other cameraman, so no help there." (Employer's Ex. 2).

(4) If a crew member fails to follow the instructions of a producer - director then such crew member would be considered to have been insubordinate and appropriate disciplinary action would be taken against him (N.T. 189-190).

(5) A producer - director in describing the functions he performs testified that he supervises the film editor and that while the show is on the air he is responsible for directing the crew (N.T. 102-04).

e. The Regional Director to support his erroneous conclusion that the producer - directors are not supervisors when they direct news programs stresses that in the Regional Director's view the real supervisor in the news situation is the so-called News Producer or News Editor (Decision at p. 2 and p. 4, fn. 7). However, when the producer - director functions in a non-news program, for example, a public affairs program, he is not only directing but is also performing the function of a producer controlling all aspects of the show. Thus, the Regional Director recognized the supervisory status of a producer of a news show and he was wrong both factually and legally in not according the same supervisory status to the producer - directors when they produce (as they all do) a non-news program.

V. In analyzing the functions of the producer - director as a producer, the Regional Director ignored the evidence showing the management status of the producer - director. For example, the Regional Director ignored the following evidence:

a. When operating as a producer, the producer - director has overall responsibility for the entire program which comes out over the air and this includes responsibility for the content of the program, the format of the program, the subject matters which will be discussed on the program, the guests who will appear on the program and all other matters which are essential to producing a high quality type program (N.T. 191).

b. A producer - director agreed with this description of his functions as a producer when he testified that he had complete and overall responsibility for the public affairs program which he is responsible for producing (N.T. 125).

c. The management status of the producer - director is shown by the fact that on one public affairs program the producer - director is the only Westinghouse contact with that program. As the Program Manager testified:

> ". . . the key reason why we have him there is as the management representative on the show; there is no one else there of any authority who can say hey this is a problem, or here's the way we are going to do this or, as Mr. Herring pointed out, to bring things to the attention of either myself or Dave Beddow" (N.T. 201-02).

d. In certain instances shows produced by producer - directors have out-of-pocket or above-the-line budgets and these sums can run into many thousands of dollars (N.T. 333). On one such show, produced by a producer - director involved in this proceeding, the annual above-the-line budget is approximately

$13,000 (N.T. 333) (erroneously referred to as only $5,000 by the Regional Director - Decision, p. 4, fn. 8). The producer - director has the responsibility and discretion in determining how those funds will be spent and whether it will be for transportation, guest appearances or any other matters which the producer - director deems necessary in order to produce the show (N.T. 181, 333). Moreover, for a number of years, KYW produced a show called "Contact" which was produced by another producer - director involved in this proceeding. That show had an above-the-line budget of $30,000 and the producer was responsible for the spending of that budget (N.T. 182).

e. In discussing one show which is produced by a producer - director, the Regional Director erroneously concluded that the producer - director played little part in determining the content or format of that program (Decision at p. 2). On the contrary, the evidence shows that the end result was that the format and content were almost largely what was suggested by the producer - director and, in fact, suggestions by the Program Manager did not become part of the content or format (N.T. 193-195).

VI. Equally, the Regional Director's conclusion that the producer - directors were not managerial employees is clearly erroneous as shown by a discussion of the evidence in paragraphs IV through V above. For example, in rejecting the managerial status of the producer - directors, the Regional Director concluded that "The discretion and responsibility which has been vested in the producer - directors referred to above relates to

their ability to effectuate established and well-defined policies formulated by their supervisors and none of the producer - directors has the broad authority to extend the Employer's credit" (Decision at p. 4). This finding is clearly erroneous as shown by the evidence discussed above including the evidence relating to the fact that producer - directors do have the authority to extend the employer's credit on shows which have out-of-pocket budgets.

The Regional Director also erred in concluding that even if he found the producer - directors to be managerial employees the record failed to show any cogent reason for denying them representation (Decision at p. 4). On the contrary, such "cogent reason" is clearly revealed by the evidence. To place these producer - directors in a unit represented by a Union would create insurmountable problems of divided loyalties, thus rendering the producer - directors incapable of adequately performing their management functions and would create a clear conflict of interest between the producer - director's duty to responsibly direct the crews and his Union responsibilities.

VII. The erroneous nature of the Regional Director's conclusion that the producer - directors are not supervisors or managerial employees is shown by his conclusion with respect to Susan Horowitz, a producer - director. As the Regional Director recognized, the uncontradicted testimony (N.T. 318-19) was that she hires the staff for the program which she produces (Decision at p. 4, fn. 6). In addition, she is the producer on a show which has an above-the-line budget of $13,000 which she has the authority to

spend (N.T. 181, 333). Despite these facts, the Regional Director concluded that she was not a supervisory or managerial employee.

VIII. The effect of the Regional Director's decision is to remove the crews on both news programs and non-news programs from any effective supervision whatsoever. It begs the question to state, as the Regional Director does, that the crew is highly skilled (Decision at p. 3). This is not relevant for highly skilled or not, there must be someone in authority instructing and supervising the crew and up until now that function has been performed by the producer - director. Westinghouse's responsibilities as a licensee of the Federal Communiciations Commission and to the public cannot permit either news or non-news programs to go out over the air unsupervised by management personnel. In short, the Regional Director's decision deprives Westinghouse of its right to utilize key elements of its supervisory staff to continue to perform their functions as they have in the past. The decision, if not reversed by this Board, will require Westinghouse to completely restructure its management - supervisory staff to insure that the role of the producer - director is filled by management, supervisory personnel.

IX. The Regional Director's decision ignores both the language and the basic purpose of Section 2(11) of the Act defining the term "Supervisor" and reads out of the definition of the term "Supervisor" the phrase "responsibly to direct them." In addition, the Regional Director's decision is contrary to Board interpretation of this particular section of the Act including other

Westinghouse cases involving persons at other Westinghouse stations performing essentially the same functions as performed by the producer - directors in this case. See Westinghouse Broadcasting Company, Inc., 195 NLRB No. 63 (1972); Westinghouse Broadcasting Company, Inc., 188 NLRB No. 24 (1971); see also Westinghouse Broadcasting Company, Inc., Case No. 20-RC-9664 (1971). Thus, in view of the Regional Director's decision in the instant case, Westinghouse is confronted with the complex and difficult situation of having persons performing the same functions be supervisors at certain stations but not, in the Regional Director's view, supervisors at KYW-TV.

X. The Regional Director's decision is also contrary to this Board's well established principles utilized to determine when employees are in fact managerial employees and excluding those employees from representation in situations, such as the instant case, where a clear conflict of interest between their duties as management employees and Union members would result. In fact this Board has found employees to be managerial employees who possess far less indicia of management status than the producer - directors involved here. See, e.g., R. L. Polk & Co., 123 NLRB 1171 (1954) (systems and procedure analysts were managerial employees); Moore-McCormack Lines, Inc., 181 NLTB 510 (1970)(persons planning for cargo loading were managerial employees); see also Wichita Eagle & Beacon Publishing Co. v. NLRB, F.2d , 71 LC ¶13,791 (10th Cir. 1973)(editorial writers were managerial employees).

WHEREFORE, the Employer, Westinghouse Broadcasting Company, Inc., requests the National Labor Relations Board to:

(a) Grant its Request for Review of the Decision and Direction of Election dated July 23, 1973;

(b) Order the Regional Director for the Fourth Region to stay any election in this matter pending a final determination by the Board of this Request for Review; and

(c) Set aside the Decision and Direction of Election and find that the Producer - Directors are supervisory or managerial employees and direct that the petition be dismissed.

Respectfully submitted,

Matthew J. Broderick
Attorney for Employer
Westinghouse Broadcasting Co., Inc.
1600 Three Penn Center
Philadelphia, Penna. 19102

Of Counsel:

Dechert Price & Rhoads

Dated: August 3, 1973

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RAAUTJRZ RUEVDEL0005 2342310-UUUU--RUEVDDG.

FM ROBERT VOLGER DEPUTY EXEC SECY WSHDC NLRB

TO RUEVDDG/2/NLRB PHILA PA

TO RUEVDDG/2/DECHERT PRICE AND RHOADS ATTN MATTHEW J BRODERICK 16[illegible]

THREE PENN CENTER PHILA PA

BT

RE: WESTINGHOUSE BROADCASTING CO INC 4-RC-18351.

EMPLOYERS REQUEST FOR REVIEW OF REGL DIR DECISION AND DIRECTION OF ELECTION IS HEREBY DENIED AS IT RAISES NO SUBSTANTIAL ISSUES WARRANTING REVIEW EXCEPT AS TO THE UNIT PLACEMENT OF SUSAN HOROWITZ. AS SUCH ISSUE CAN BEST BE RESOLVED THROUGH THE CHALLENGE PROCEDURE THE DECISION IS AMENDED TO PERMIT HER TO VOTE SUBJECT TO CHALLENGE. BY DIRECTION OF THE BOARD.

BT

NNNN

Exhibit No. 7

22 a

FORM NLRB 760 (6-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

WESTINGHOUSE BROADCASTING COMPANY, INC.
Employer

and

DIRECTORS GUILD OF AMERICA, INC.
Petitioner

Case No. 4-RC-10351

Date issued August 22, 1973

Type of Election: (Check one:)
- ☐ Stipulation
- ☐ Board Direction
- ☐ Consent Agreement
- ☒ RD Direction

(If applicable check either or both:)
- ☐ 8(b) (7)
- ☐ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1.	Approximate number of eligible voters	4
2.	Void ballots	0
3.	Votes cast for Petitioner	4
4.	Votes cast for	
5.	Votes cast for	
6.	Votes cast against participating labor organization(s)	0
7.	Valid votes counted (sum of 3, 4, 5, and 6)	4
8.	Challenged ballots	0
9.	Valid votes counted plus challenged ballots (sum of 7 and 8)	4

10. Challenges are (not) sufficient to affect the results of the election.

11. A majority of the valid votes counted plus challenged ballots (item 9) has (not) been cast for:

Petitioner

For the Regional Director

/s/ Marian C. Palmer

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Employer	For Petitioner
/s/ J. C. Cidel	/s/ Richard Pyle
For	For

U. S. GOVERNMENT PRINTING OFFICE: 1972—476-097

Exhibit No. 8

FORM NLRB-4279
(3-72)

23 a

RC-RM-RD

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

WESTINGHOUSE BROADCASTING COMPANY, INC.

Employer

and

DIRECTORS GUILD OF AMERICA, INC.

Petitioner

TYPE OF ELECTION
(Check one)
- ☐ Consent Agreement
- ☐ Stipulation
- ☐ Board Direction
- ☒ RD Direction

(Also check box below where appropriate)
- ☐ 8(b)(7)

Case No. 4-RC-10351

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the Regional Director of the National Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned by the National Labor Relations Board, IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for Directors Guild of America, Inc.

and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

UNIT: All staff producer-directors employed by Westinghouse Broadcasting Company, Inc., at its television station KYW in Philadelphia, Pennsylvania; but excluding all other employees, guards and supervisors as defined in the Act.

Signed at Philadelphia, Pennsylvania
On the 30 day of August 19 73.

On behalf of
NATIONAL LABOR RELATIONS BOARD

Regional Director, Region [illegible]
National Labor Relations Board

Exhibit No. 9

FORM NLRB-501 (2-67)

24 a

Form Approved
Budget Bureau No. 64-R001.15

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	DO NOT WRITE IN THIS SPACE Case No. 4-CA-6581 Date Filed 9-25-73

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer	b. Number of Workers Employed
WESTINGHOUSE BROADCASTING COMPANY/KYW-TV	6 in Bargaining Unit

c. Address of Establishment (Street and number, city, State, and ZIP code)	d. Employer Representative to Contact	e. Phone No.
Independence Mall East Philadelphia, Pa. 19106	Alan Bell, General Mgr.	215 238-4700

f. Type of Establishment (Factory, mine, wholesaler, etc.)	g. Identify Principal Product or Service
Television Station	Television Programs

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On August 30, 1973 the Directors Guild of America, Inc. was certified as the collective bargaining representative for the Producer-Directors employed by Westinghouse Broadcasting Company at its television station KYW-TV in Philadelphia.

Thereafter, the Directors Guild requested in writing and by telephone that the Company meet with the Guild for the purpose of bargaining.

On September 21, 1973 Westinghouse Broadcasting Company, by its attorney Stephen Kimatian, refused to meet with or bargain with the Directors Guild, indicating that the Company would test the Certification in the appropriate Circuit Court of Appeals, in violation of Section 8(a)(5).

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

DIRECTORS GUILD OF AMERICA, INC.

4a. Address (Street and number, city, State, and ZIP code)	4b. Telephone No.
110 West 57th Street New York, N.Y. 10019	212 581-0370

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

Same

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ Alan S. Gordon, Associate General Counsel
(Signature of representative or person filing charge) (Title, if any)

Address 110 West 57 Street, New York, N.Y. 10019 212-581-0370 (Telephone number) September 21, 1973 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 788-811

Exhibit No. 12

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

WESTINGHOUSE BROADCASTING COMPANY, INCORPORATED/KYW-TV

and

Case No. 4-CA-6581

DIRECTORS GUILD OF AMERICA, INCORPORATED

COMPLAINT AND NOTICE OF HEARING

It having been charged by Directors Guild of America, Incorporated, herein called the Union, that Westinghouse Broadcasting Company, Inc./KYW-TV, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Section 151 et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Fourth Region, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. A copy of the charge was served on Respondent by registered mail on September 25, 1973 (No. 778018).

2 (a) Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the state of Indiana, and is engaged in the operation of broadcasting stations throughout the United States including television station KYW-TV, located in Philadelphia, Pennsylvania.

(b) During the past year, Respondent, in the course and conduct of its business operations sold and provided services valued in excess of $500,000. During the same period Respondent's sales of services to customers outside the Commonwealth of Pennsylvania exceeded $50,000.

(c) Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Union is, and has been at all times material herein, a labor

Exhibit No. 13

organization within the meaning of Section 2(5) of the Act.

4. At all times material herein, the following employees of Respondent constitute a unit appropriate for collective bargaining purposes within the meaning of Section 9(b) of the Act:

> All staff producer-directors employed by Westinghouse Broadcasting Company, Inc., at its television station KYW in Philadelphia, Pennsylvania; but excluding all other employees, guards and supervisors as defined in the Act.

5. On or about August 22, 1973, a majority of the employees of Respondent in the unit described in paragraph 4 above, by a secret ballot election conducted under the supervision of the Regional Director for the Fourth Region of the Board, designated and selected the Union as their representative for the purpose of collective bargaining with Respondent, and on or about August 30, 1973, the Board certified the Union as the exclusive bargaining representative of the employees in said unit.

6. At all times since August 30, 1973, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the employees in the unit described in paragraph 4 above, and by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

7. Commencing on or about September 7, 1973, and continuing to date, the Union has requested, and is requesting, Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the excusive collective bargaining representative of all the employees of Respondent in the unit described in paragraph 4, above.

8. Commencing on or about September 7, 1973, and at all times thereafter, Respondent did refuse, and continues to refuse, to bargain collectively with the Union as the exclusive bargaining representative of all the employees in the unit described in paragraph 4, above, notwithstanding that the Union was, and is, the duly designated exclusive collective

bargaining representative of said employees.

9. By the acts described above in paragraph 8, in connection with the allegations described above in paragraphs 4,5,6 and 7, and by each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

10. By the Acts described above in paragraph 8, in connection with the allegations described above in paragraphs 4,5,6 and 7, and by each of said acts, Respondent did refuse to bargain collectively, and is refusing to bargain collectively, with the representative of its employees, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a) 5 of the Act.

11. The activities of Respondent described above in paragraph 4 through 10, occurring in connection with the operations of Respondent described above in paragraph 2, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

12. The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 31st day of October, 1973, at 11:00 o'clock in the forenoon, Eastern Standard Time, in a hearing room of the Fourth Regional Office, National Labor Relations Board, Suite 4400, William J. Green Jr. Federal Building, 600 Arch Street, Philadelphia, Pennsylvania, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board, as amended, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and 4 copies of an answer to said Complaint within 10 days from the service thereof and that, unless it does, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of the answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Philadelphia, Pennsylvania, this 16th day of October, 1973.

Bernard Samoff

BERNARD SAMOFF, Regional Director
for the Fourth Region
National Labor Relations Board

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4

In the Matter of:	:	
Westinghouse Broadcasting Company, Inc.	:	
- and -	:	Case No. 4-CA-6581
Directors Guild of America, Incorporated.	:	

A N S W E R

Comes Now Respondent, Westinghouse Broadcasting Company, Inc., and pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations, Series 8, as amended, files an Answer in the above captioned case.

(1)

The allegations of paragraph 1 of the Complaint are admitted.

(2)

The allegations of paragraph 2(a), (b) and (c) of the Complaint are admitted.

(3)

The allegations of paragraph 3 of the Complaint are denied.

(4)

The allegations of paragraph 4 of the Complaint are denied.

(5)

The allegations of paragraph 5 of the Complaint are admitted.

(6)

The allegations of paragraph 6 of the Complaint are denied.

(7)

The allegations of paragraph 7 of the Complaint are denied.

(8)

The allegations of paragraph 8 of the Complaint are denied.

(9)

The allegations of paragraph 9 of the Complaint are denied.

(10)

The allegations of paragraph 10 of the Complaint are denied.

31 a

(11)

The allegations of paragraph 11 of the Complaint are denied.

(12)

The allegations of paragraph 12 of the Complaint are denied.

Respectfully submitted,

WESTINGHOUSE BROADCASTING COMPANY, INC

By David L. Trezise

David L. Trezise
Chief Labor Counsel
Westinghouse Building
Pittsburgh, Pennsylvania 15222

October 26, 1973

MFJ

209 NLRB No. 121

D--8537
Philadelphia, Pa.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

RECEIVED
NOV 20 1974
NLRB
WASH., D. C.

WESTINGHOUSE BROADCASTING
COMPANY, INCORPORATED/KYW--TV

and

DIRECTORS GUILD OF
AMERICA, INCORPORATED

Case 4--CA--6581

DECISION AND ORDER

Upon a charge filed on September 25, 1973, by Directors Guild of America, Incorporated, herein called the Union, and duly served on Westinghouse Broadcasting Company, Incorporated/KYW--TV, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 4, issued a complaint on October 16, 1973, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on August 30, 1973, following a Board election in Case 4--RC--10351, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1/] and that, commencing

1/ Official notice is taken of the record in the representation proceeding, Case 4--RC--10351, as the term "record" is defined in Secs. (continued)

on or about September 7, 1973, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On October 31, 1973, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On December 3, 1973, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, and memorandum in support thereof. Subsequently, on December 7, 1973, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Thereafter, on January 7, 1974, Respondent filed a response, entitled "Opposition to Motion for Summary Judgment." The Union subsequently filed a statement in support of the Motion for Summary Judgment.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Motion for Summary Judgment, Respondent attacks determinations made in the underlying representation

1/ 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938, enfd. 388 F.2d 683 (C.A. 4, 1968); Golden Age Beverage Co., 167 NLRB 151, enfd. 415 F.2d 26 (C.A. 5, 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C. Va., 1967); Follett Corp., 164 NLRB 378, enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

case. Our review of the record indicates that on April 30, 1973, the Union filed a petition for a unit of producer-directors at the Respondent's Philadelphia, Pennsylvania, television station. On July 23, 1973, the Regional Director issued his Decision and Direction of Election, in which he found, contrary to Respondent, that the Union was a labor organization within the meaning of the Act, that the producer-directors were neither supervisors nor managerial employees, and that a unit of producer-directors was appropriate for the purposes of collective bargaining. Respondent then filed a request for review of the Regional Director's Decision. On August 21, 1973, the Board denied the request for review on the grounds that it raised no substantial issues warranting review.[2/] On the next day, an election was conducted, in which all of the four eligible voters cast ballots for the Union. On August 30, 1973, the Union was certified.

Respondent now urges that special circumstances compel reconsideration of the representation case and that the Board should revoke the certification and dismiss the complaint. However, as Respondent has set forth no special circumstances which would require us to reconsider our decision, we find Respondent's contentions lacking in merit. It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3/]

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does

---

2/ The Board's Order denying the request for review permitted one individual to vote subject to challenge.

3/ See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

nor offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it set forth that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.[4/]

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Indiana, and is engaged in the operation of broadcasting stations throughout the United States including television station KYW--TV, located in Philadelphia, Pennsylvania.

During the past year, Respondent, in the course and conduct of its business operations, sold and provided services valued in excess of $500,000. During the same period Respondent's sales of services to customers outside the Commonwealth of Pennsylvania exceeded $50,000.

4/ In its answer to the complaint, Respondent also denied that the Union requested Respondent to bargain with it, and that Respondent refused to do so. However, attached to the General Counsel's Motion for Summary Judgment are a letter dated August 28, 1973, from the Union to Respondent's general manager, an affidavit by the Union's executive secretary, and a letter dated September 25, 1973, from Respondent's business manager to the Union. The August 28 letter requests bargaining. The affidavit states that on September 7, 1973, and on various later dates, the executive secretary requested Respondent's labor relations lawyer to bargain, and that the latter consistently answered that Respondent had not yet decided whether to bargain or to test the Board's action in the courts. The September 25 letter indicates a management decision not to bargain. Nor does Respondent's response advert to the request and refusal.

As the contents of the affidavit and letters have thus not been controverted, they stand admitted. Therefore, Respondent's denials of the allegations of the complaint are stricken as sham and the allegations are deemed to have been admitted and found to be true.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Directors Guild of America, Incorporated, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All staff producer-directors employed by Westinghouse Broadcasting Company, Inc., at its television station KYW in Philadelphia, Pennsylvania; but excluding all other employees, guards, and supervisors as defined in the Act.

2. The certification

On August 22, 1973, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 4, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on August 30, 1973, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and the Union's Refusal

Commencing on or about September 7, 1973, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about September 7, 1973, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since September 7, 1973, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785; Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229, enfd. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421, enfd. 350 F.2d 57 (C.A. 10).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Westinghouse Broadcasting Company, Incorporated/KYW--TV, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Directors Guild of America, Incorporated, is a labor organization within the meaning of Section 2(5) of the Act.

3. All staff producer-directors employed by Westinghouse Broadcasting Company, Inc., at its television station KYW in Philadelphia, Pennsylvania; but excluding all other employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since August 30, 1973, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 7, 1973, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Westinghouse Broadcasting Company, Incorporated/KYW--TV, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Directors Guild of America, Incorporated, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All staff producer-directors employed by Westinghouse Broadcasting Company, Inc., at its television station KYW in Philadelphia, Pennsylvania; but excluding all other employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its television station KYW in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."[5/] Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

5/ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

MAR 19 1974

Edward B. Miller, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

D--8537

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Directors Guild of America, Incorporated as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All staff producer-directors employed by Westinghouse Broadcasting Company, Inc., at its television station KYW in Philadelphia, Pennsylvania; but excluding all other employees, guards, and supervisors as defined in the Act.

WESTINGHOUSE BROADCASTING
COMPANY, INCORPORATED/KYW--TV
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with it provisions may be directed to the Board's Office, William J. Green, Jr., Federal Building, 600 Arch Street, Suite 4400, Philadelphia, Pennsylvania 19106, Telephone 215--597--7601.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Fourth Region

In the Matter of:	
WESTINGHOUSE BROADCASTING COMPANY, INC. Employer	
-and-	Case No. 4-RC-10351
DIRECTORS GUILD OF AMERICA, INC. Petitioner	

Room 118
National Labor Relations Board
Philadelphia, Pennsylvania
Tuesday, June 5, 1973

The above-entitled case came on for hearing, pursuant to notice, at 10:00o'clock, a.m.

BEFORE:

ALEXANDER T. GRAHAM, Hearing Officer.

APPEARANCES:

MATTHEW J. BRODERICK, Esq.	Law firm of Dechert, Price & Rhoads, 1600 Three Penn Center, Philadelphia, Penna., appearing on behalf of the Employer.
ALAN S. GORDON, Esq.	110 W. 57th Street, N. Y., N. Y., 10019, appearing on behalf of the Petitioner.

* * *

PROCEEDINGS

10:00 o'clock, a.m.

HEARING OFFICER GRAHAM: On the record.

The hearing will be in order. This is a formal hearing in the matter of KWY-TV, Westinghouse Broadcasting Company, Case Number 4-RC-10351, before The National Labor Relations Board.

The Hearing Officer appearing for The National Labor Relations Board is Alexander T. Graham.

Will Counsel please state their appearances for the record? For the Company?

MR. BRODERICK: Matthew J. Broderick of Dechert, Price & Rhoads, Philadelphia, Pennsylvania.

HEARING OFFICER: For the Petitioner?

MR. GORDON: Alan S. Gordon, Associate General Counsel for the Directors Guild of America.

HEARING OFFICER: Are there any other persons, parties or labor organizations in the hearing room at this time who claim an interest in this proceeding?

(No Response)

HEARING OFFICER: Let the record show no response.

All parties have been informed of the procedures at formal hearings before The Board by service of a statement of standard procedures with the notice of hearing. I have additional copies of this statement

for distribution if any party wishes more.

I now propose to receive the formal papers; they have been marked for identification as Board Exhibits 1(a) through 1(i). Is there any objection to the receipt of Board Exhibits 1(a) through 1(i) into the record.

(The documents above-referred to were marked Board Ex Nos 1(a)-1(i) for identification.)

MR. GORDON: No objection.

MR. BRODERICK: No objection.

HEARING OFFICER: Hearing no objection, they are received.

(The documents above-referred to, heretofore marked Board Ex 1a-1i, were received in evidence.)

HEARING OFFICER: Are there any motions to intervene in these proceedings to be submitted to the Hearing Officer at this time?

(No Response)

HEARING OFFICER: Let the record show no response.

Mr. Gordon, is the correct name of the Petitioner that which appears in the petition filed in this case; namely, Directors Guild of America, Inc.?

MR. GORDON: Yes, it is.

HEARING OFFICER: Gentlemen, is it possible to stipulate that the Directors Guild of America, Inc. is a

labor organization within the meaning of The National Labor Relations Act?

MR. BRODERICK: Well, I don't want to unduly prolong this, but I'm not sure that I'm in a position to stipulate to that, primarily because I recall reading a case in which it appeared that the Directors Guild took the position that it was an organization which admitted to its membership only management or supervisory personnel; and I suppose that's my problem with stipulating that the DGA is a bonafide labor organization under the definition of the Act.

MR. GORDON: Mr. Hearing Officer, the National Labor Relations Board ruled that the Directors Guild is a labor organization within the meaning of the Act at 198 NLRB 103.

MR. BRODERICK: Off the record for a minute?

HEARING OFFICER: Off the record.

(discussion off the record)

HEARING OFFICER: On the record.

In the off-the-record discussion, Mr. Gordon cited an NLRB case in which the Board took the position that the Directors Guild of America, Inc. is a labor organization. For the record, Mr. Gordon, would you give us the name of that case and case number?

MR. GORDON: The name of that case is the

Directors Guild of America (Association of Motion Picture Producers); it's recorded at 198 NLRB 103 and 81 LLRM 1477.

HEARING OFFICER: What's your position with regard to the status of the labor organization of this Petitioner, Mr. Broderick?

MR. BRODERICK: Well, in view of the decision by the Board referred to by Mr. Gordon, it would seem to me that we would stipulate that it is a labor organization, since the Board has apparently so found.

HEARING OFFICER: Do you stipulate to that, Mr. Gordon?

MR. GORDON: Yes.

HEARING OFFICER: The stipulation is received.

Mr. Broderick, will the Company please state its full and correct name for the record?

MR. BRODERICK: Westinghouse Broadcasting Company, Inc.

HEARING OFFICER: I notice the petition refers to the Employer as KWY-TV, Westhinghouse Broadcasting Company.

MR. BRODERICK: Well, the correct name of the Company is as I stated; KWY-TV is a division, if that's the appropriate word, of Westhinghouse. But, the particular concern that we are involved here with

here today is KWY-TV.

HEARING OFFICER: Are there any objections to having the petition and formal papers amended so that the name of the Employer will correctly appear in the captions thereon as Westinghouse Broadcasting Company, Inc.

MR. BRODERICK: No objection.

MR. GORDON: No objection.

HEARING OFFICER: Hearing no objection, the amendment is allowed.

Prior to the opening of the hearing, with Mr. Broderick's aid, I prepared a proposed stipulation with regard to the business and operation of the company which I will now read into the record as a proposed stipulation. Westinghouse Broadcasting Company, Inc., an Indiana corporation with its principal offices in New York City, New York, is engaged in the operation of broadcasting stations throughout the United States, including KWY-TV, Philadelphia, Pennsylvania. Annually the Employer's sales of services to customers outside the Commonwealth of Pennsylvania are in excess of $50,000.00 in dollar volume; annually gross revenues exceeed $500,000.00. Mr. Broderick, is that a fair statement of the business and operation of the company?

MR. BRODERICK: Yes, sir.

HEARING OFFICER: Mr. Broderick, on behalf of the Company, do you admit that the Employer is engaged in interstate commerce within the meaning of The National Labor Relations Act?

MR. BRODERICK: Yes, sir.

HEARING OFFICER: Do you so stipulate, Mr. Gordon?

MR. GORDON: Yes, sir.

HEARING OFFICER: The stipulation is received.

Also in the pre-hearing discussion, Mr. Gordon informed me that on March 22nd, 1973, as described in the petition, the Petitioner orally requested recognition as bargaining agent for the employees in the requested unit; on the same day the Employer declined to grant recognition unless or until the Petitioner is certified by the Board.

MR. BRODERICK: That is correct.

HEARING OFFICER: Mr. Gordon?

MR. GORDON: That is correct.

HEARING OFFICER: I'll consider that in the form of a stipulation, and the stipulation is received into the record. Off the record.

(discussion off the record)

HEARING OFFICER: On the record.

In the off-the-record discussion, Mr. Broderick

informed me that there is no history of collective bargaining regarding the producer/directors at KWY-TV; and Mr. Gordon agreed. I note that the petition requests a unit including all staff producers and directors and excludes all other employees. Is that the correct unit description as requested by the Petitioner, Mr. Gordon?

MR. GORDON: That is correct.

HEARING OFFICER: Mr. Broderick, what is the position of the Employer with regard to this unit description?

MR. BRODERICK: The position of the Employer is that it's inappropriate because the producer/directors are either supervisory or management personnel and, thus, should not be represented for collective bargaining under the Act.

HEARING OFFICER: Are we, therefore, agreed, gentlemen, that the issue which confronts the Regional Director today is whether or not the producer/directors, which I notice according to the petition number five, are supervisors as defined in the Act or employees as contended by the Petitioner?

MR. GORDON: That is the issue as I see it, yes.

MR. BRODERICK: With the additional caveat that if you move from their supervisory status, there may be

evidence that would justify a management classification as opposed to a supervisory classification; but I do agree that the basic issue is their supervisory status.

HEARING OFFICER: So, the primary issue is whether or not the employees in question, the producer/directors in question are supervisors; and a secondary issue is whether or not they are managerial personnel?

MR. BRODERICK: That is correct.

HEARING OFFICER: Mr. Gordon, in our discussion prior to the opening of the hearing, I recall that you made mention that you may have another position with regard to the producer/directors; is that correct? I don't mean to put you on the spot.

MR. GORDON: I have two others, one of which we will pursue at the hearing, maybe both of which, but one of which certainly. It's not really a different position; it's along the same lines; the evidence is the same. I'll develop that during the course of the hearing, since it is the same evidence; unless you want me to state it now.

HEARING OFFICER: I think you might articulate your entire position.

MR. GORDON: Obviously then our first position is that these employees are not supervisors. The second

position is that even if they have some seemingly supervisory functions, they are within the Board's ruling that if they have no responsibility beyond a specific assigned project, they are not supervisors, not withstanding their duties. So, we think either that they're not supervisors or that they have no responsibility beyond a very limited, specific assig area.

HEARING OFFICER: Off the record.

(discussion off the record)

HEARING OFFICER: On the record.

In the off-the-record discussion, I attempted to explore with both the Petitioner and the Company an orderly manner in which to proceed with the hearing; and I suggested that the Employer begin with the introduction of a stipulation or some information concerning the supervisory structure of the company's operation at KWY-TV, and Mr. Broderick prepared -- what should we describe this as?

MR. BRODERICK: An organizational flow chart, I suppose.

HEARING OFFICER: An organizational flow chart, copies of which were given to the Hearing Officer and Mr. Gordon; and Mr. Gordon indicated that he found serious questions concerning the make up of the chart.

At this point I would like to ask the Company to -- even if it's just a description in the record -- describe something about the operation of KWY-TV's station and its supervisory hierarchy; and then we can move on from there.

MR. BRODERICK: Well, I think that really goes into a rather elaborate presentation through my witnesses; it's not as simple as just describing it in a one or two paragraph statement; and perhaps Mr. Gordon's witnesses will shed some light on that, but I just don't feel that, for the record that I would want to attempt to describe it even generally because I think the complexity of it must come through oral testimony.

HEARING OFFICER: All right. You would prefer to proceed with Mr. Gordon's presentation and then make your own?

MR. BRODERICK: Yes.

HEARING OFFICER: All right, gentlemen. Mr. Gordon.

MR. GORDON: As my first witness, I call Mr. Richard Pyle.

HEARING OFFICER: Mr. Pyle, please take the stand.

Please raise your right hand, sir.

Whereupon,

RICHARD CHAUNCEY PYLE

was called as a witness by and on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows:

HEARING OFFICER: Mr. Pyle, please state your full and correct name for the record?

THE WITNESS: Richard Chauncey Pyle.

DIRECT EXAMINATION

Q (By Mr. Gordon) Mr. Pyle, are you employed by Westinghouse Broadcasting Company?

A Yes, I am.

Q At KWY Television?

A That's correct.

Q For how long have you been employed there?

A Since August of '72.

Q And, in what capacity are you employed?

A As a producer/director.

Q What kind of programs do you direct?

A Primarily news programs; my basic responsibilities are directing the 6:00 o'clock news and the 11:00 o'clock news.

Q And, for the record KWY is a television station that broadcasts for reception by the general public?

A Right, it's a commercial broadcasting company which is in the business for making a profit.

Q Would you describe then for the record your duties

as a director?

A Just to take a typical 6:00 o'clock or even an 11:00 o'clock news cast, an hour and a half or maybe two hours before the program begins, I receive from the Producer of the program a format, a format in which he has listed all the items that he wants to include in the show. He goes over what we have available on the wire machines, the AP and UPI news sources, what the network has sent down and what the photographers have shot during the day; he decides what news he wants to include in the program and in what order as well as whether he's going to supplement it with film or supplement it with pictures; he has also already talked with the art department and decided, you know what these pictures and what these visuals might be, whether the film will be sound film or silent film, whether there will be a cartridge accompanying it or whether there will be in-studio talk by a news talent. All this information is on the format that I receive, like I indicated, an hour and a half or two hours before the program. These formats are also distributed, in addition to myself, to the projectionist, a gentleman who runs a projector; the video tape operator; the audio man; and the cameraman; we all get a copy of it. The next step is about hopefully a half an

hour before the start of a show a lot of times -- not quite that soon -- but, we get a copy of the script which again the Producer has prepared. The script the Producer makes up from the format, and the script is just that; it's a written script of everything the news talent is to say as well as instructions and directions for myself; those instructions being where to take film, how long he film will be, whether the film will be silent or sound, whether the film will be accompanied by a cartridge, when I'm to go to the weather man, when I'm to take pictures, et cetera. All these instructions and directions for putting together the show. Once I've gone through this script and looked it over and made sure as far as I can, I'm concerned, from the technical end that you know that I have no problems with it, you know that it will go smoothly, we go into the control room and on time, again a time stipulated by the station log, the official station log and by the format. We start the show, and we end it again according to the time stipulated by the log and the format. And, my physical function during the show, we have a piece of equipment called a switcher; for those of you who aren't familiar with what a switcher does, it's a bank of buttons, I'd say about the third the size of your desk, buttons and handles that, you know

one button represents a camera; according to the script where it says "talent live," I'll push camera one if it says "talent in chroma-key," O.K., camera two with camera three, it's a technical function, which I perform during the show under the, I guess, direct supervision of the Producer who put the whole show together; he sits beside me and tells me, say he decides to change the order of the way that he set things up; during the show he might say, you know I want to drop Page 23; relay this message to the talent on the floor, let's drop Page 23; he might say, I have an important story; please tell the talent to add that, and I pass that along to the stage manager who in turn passes it to the talent; he is also there to make sure that the show gets off on time; the station log may indicate that our off time would be, say for the 11:00 o'clock news, 11:28:30; at which point, you know he cues us, he gives me cues to pass on to the talent to make sure that we do indeed get finished with the program by that time.

Q When you are in the control room, who else is there with you?

A Like I mentioned, the Producer is there; he has over-all responsibility for the show; it's his baby, I guess; and he's the one who decides, you know what goes on and you know what time everything goes on and what

time it gets completed. Also in the control room with us is the audio man who you know works the audio switcher which is a board about the size of your desk; where the buttons I push control the video, he pushes the cooresponding buttons as far as the audio is concerned.

Q Who decides what is actually broadcast over the air?

A The Producer; he's the one who writes most of the copy or assigns writers to write the copy; he's the one who selects and edits the film; these are functions which we are not allowed to do and can't perform.

Q Have you ever as a director ever made suggestions as to changes and the things that go out over the air, the technical quality of the picture?

A Yeah, on many occasions, actually not all that frequently, though, I'll say something that in my opinion a particular piece of video tape technically isn't suited to go on the air; say it has a lot of drop-outs in it or to me it's just in my judgement it looks bad or say a piece of visual is bad; and I can suggest this to him, but I can't you know effectively bring about the deletion or addition of that visual or film.

Q Are your suggestions always accepted by the

Producer?

A No. In fact, that's been a bone of contention that -- well, they can't always accept it. He has by contract over-all responsibility for the program. We brought this up in meetings with Mr. Salzman that you know things that have, you know that are scratched or in bad taste shouldn't go on the air in our opinion. But, he says you know the decision is always his; the over-all responsibility always rests with the Producer; and if he says it stays, it stays; if he says it goes, it goes.

Q Who determines what talent will be used on a program?

A That's a function, I would imagine, of the news director and the assistant news director; they decide, well for the news anyway, they decide, they make up the talent schedule which says you know Vince Leonard does, anchors the 6:00 o'clock news and the 11:00 o'clock news and on the same schedule that Bobbie Craddock anchors the 8:25 news and Jessica Savitch will appear in a supportive role in the 11:00 p.m. news cast and that Bill Custer and Al Meltzer also will be on that same news cast.

Q Does the director ever get involved in that type of decision?

A No, absolutely not.

Q Who decides what news will be photographed?

A The assignment editor schedules the, schedules the photographers to go out and cover the various stories; the producer may also have suggestions for the assignment editor that he wants such and such an item on his show and would like them to back it up; I'm sure the news director also gets in that, and I'm sure the program manager also contributes along this line.

Q Who writes the script that the talent uses?

A The producer writes it; he may delegate writers or pieces of talent who are also in the same shop, the American Federation of Television and Radio Artists, to also write.

Q Do you approve the script?

A No, the producer does that. As a matter of fact, I can't even see the script unless he approves it first; I can't look at it to make sure you know that the camera and the cards, camera cards will be O.K. and that we can physically accomplish what he wants to do until he has approved the script.

Q Mr. Pyle, who is your immediate supervisor?

A I guess Ron Little, the Production Manager would be my immediate supervisor.

Q Would you describe for the Hearing Officer, if you

know, the structure of the broadcasting company as it affects you -- your supervisors going up the line?

A. From the bottom up.

Q. Yes. Now you say that your immediate supervisor is Mr. Little?

A. Starting from there, Mr. Little is the Production Manager; he is the one who determines when I work every week; he puts out a Producer/Director, he puts out a facility schedule which includes on it the Director's assignments; it tells me that, you know on Monday I've got the 6:00 o'clock news and the 11:00 o'clock news; on Tuesday I've got the 6:00 o'clock news, the 11:00 o'clock news and in between I have a video tape session, say a public affairs show to record for Frank Hall. He also schedules the studio crew as well as the film editors, the art department, the artists, he schedules the scenic artists; he's responsible for the general operation of the studio; he's also the guy, like say I'm assigned to tape a program, act as director on a program, I have to have before I do that a signed video tape order from him; if he forgets to do it or it isn't put out, he has distributed memos to the effect that we're not to record that program and the tape operators refuse to do it if we don't have an order from him authorizing us to record the program.

Q Who is above Mr. Little?

A Above Mr. Little would be Dave Beddow, I imagine; he's the executive producer/assistant program manager of the station.

Q And, above Mr. Beddow?

A Above Mr. Beddow is Mr. Salzman; he's the program manager of the station. That's the hierarchy within the program department itself.

Q And, do you mean that this is all of the program department?

A Yeah, within the program department, there's a news department and a news director, who also can tell us you know do this or don't do that, et cetera. Above Mr. Salzman is Alan Bell who is the general manager and vice president. Above him would be Frank Tooke, who is -- I could be wrong; I believe his title is area vice president.

HEARING OFFICER: How about spelling some of these?

THE WITNESS: Oh, sure.

HEARING OFFICER: How about Beddow?

THE WITNESS: B-E-D-D-O-W. Salzman is S-A-L-Z-M-A-N. Mr. Alan Bell, B-E-L-L. And, Tooke is T-O-O-K-E.

Q (By Mr. Gordon) Suppose you are going to be out

sick, who do you call?

A I would call Ron Little. There have been occasions when I have been out sick, and I called Ron Little; or if he is unavailable for some reason, I would call Dave Beddow.

Q I show you an organizational chart prepared by the company.

MR GORDON: For identification could it be...?

HEARING OFFICER: Do you intend to introduce this as an exhibit?

MR. BRODERICK: I do.

HEARING OFFICER: Would you have any objection to having this marked as Employer's Exhibit 1.

MR. BRODERICK: For identification only?

HEARING OFFICER: Yes.

MR. BRODERICK: No objection.

HEARING OFFICER: All right.

(The document above-referred to was marked Employer's Exhibit 1 for identification.)

Q (By Mr. Gordon) I show you this piece of paper which has been marked Employer's Exhibit Number 1 for identification. Would you look at it; does it appear to you to be an organizational chart of the television station? I'm not asking you whether it's correct.

A Yes, it appears to represent the various departments

and individuals who are involved in the operation of the television station; at least some of them.

Q We'll come back to this. and as you heard the company intends to offer it into evidence; but could you briefly describe for the record why it is not accurate?

A Well, the initial thing that struck me, it lists on the same plane the producer/directors and the production manager who schedules and is responsible for the producer/directors.

Q The program manager is Mr. Little?

A The production manager. According to this chart it indicates that I am on the same plane as Ron Little who is the production manager.

Q Does Mr. Little in fact give you orders?

A Mr. Little sets my schedule and gives me orders, talks to me if he feels I'm coming in late to work, talks to me if he feels that I'm not doing enough; I'm responsible to him.

Q What else.

A He's my supervisor.

Q What else is not correct about it?

A It lists below us the assistant news director who I also receive instructions from; and I look upon, you know if I have questions about procedure or something

that I feel needs straightening out, I go to him and ask him; and he'll often come to me and tell me things that I should be doing or that I shouldn't be doing. It lists all the way on the bottom of the list the producers, the editors....

THE REPORTER: I'm sorry. The producers who...?

A ...the editors who I assume are the producers on this chart, the news producers.

Q It just says editors, at least at this point. Now are they below the plane of your position?

A No, the editors, I would presume what they mean by editors are the producers who directly tell us what to do, directly put together and approve everything that we do on the daily news cast.

Q Now this shows that the art department is directly responsible to you; is that a fair statement of the situation?

A No, I can requisition, you know I havethe authority or I can requisition a piece of artwork, put in an art request for you know a picture to be colored or a slide to be made; but I can't tell them things; in fact, I can just ask and a lot of times they'll tell me in return.

Q Now you just testified minutes ago when you were sitting in the control room during a television program

there's someone there who's telling you what to do, at least in charge of what goes out over the air; that's the producer. Where on this chart is the producer; I don't see it?

A. The producer isn't listed on here at all. They have editors listed but not producers.

Q. When you make decisions as a director, does the producer ever overrule those decisions; can he overrule your decisions?

A. Yeah, I have to for anything, I have to ask him for most of the decisions that I make, you know other than the little ones, you know about whether, you know any decision that affects the program that he has over-all responsiblity for, I have to check with him.

Q. Now you direct the 11:00 o'clock news, so to speak; who schedules you to direct it?

A. The Production Manager, Ron Little.

Q. That's Mr. Little. Suppose you don't like that and you want to change, who do you see?

A. If I want to do something else or I don't like my assignment?

Q. If you don't like your assignment, can you change your assignment?

A. No, I could request that it be changed; but I can't change it.

Q Do you ever attend meetings with Mr. Little and Mr. Beddow and Mr. Salzman to discuss things like the performance of other employees or the company's labor relations policy or the programming schedule for the fall?

A No.

Q Do you play any part whatsoever in planning where KWY-TV is going with regard to its function as a TV station serving the public?

A No.

Q Now have you ever fired or hired or suspended anyone?

A No.

Q Have you been told that you have the authority to do that?

A No.

Q Have you ever transferred or laid off or recalled anyone?

A No.

Q Have you ever reprimanded or promoted or rewarded or disciplined anyone or have you ever mediated or adjusted grievances for anyone?

A No, I haven't.

Q Have you ever been told at anytime or has it even been intimated that you have any authority to do that?

A Absolutely not.

Q Have you ever recommended to KWY that somebody be hired or fired or suspended or laid off or recalled or any of those things that I asked?

A No, no.

Q Have you ever criticized anyone else's work; say you didn't think their work was up to par?

A I have mentioned to my supervisors in the past that you know I thought that somebody that I was working with didn't really have a flare for the job or that I didn't like to work with them.

Q Has that criticism of their work ever resulted in their being disciplined or terminated or laid off or changed?

A For the most part, quite to the contrary; I mentioned the fact that a particular camerman doesn't seem to have a flare for it and that he doesn't really seem to be doing as well as the other camermen, but the guy is still there; and I'm scheduled to work with him this week.

Q Do you consider yourself to be a supervisor?

A No.

Q Do you have an objective reason to think that other people consider you, other employees consider you a supervisor; for example, does anyone ever come to

you with grievances?

A. No.

Q. Does anyone ever call you when they're going to be out sick?

A. No.

Q. Does anyone ever call you boss or any term denoting supervisory authority?

A. No.

Q. Suppose someone wants to leave work early on a program that you're directing, do they ask you if it's O.K.?

A. No, they may tell me after the fact, after they've asked Ron Little or Dave Beddow or somebody else that they're leaving; but they don't ask me in the first part.

Q. Is there anything you can do to stop them from leaving?

A. No.

Q. If they leave or walk out, can you order another employee of the station to come in and do their job?

A. No.

Q. What salary do you earn, Mr. Pyle?

A. $12,000.00 a year.

Q. Are you familiar with the salaries of other employees at the station?

A Yeah, pretty much.

Q Approximately what's the salary that a camerman earns if you know?

A The members of the camera crew earn anywhere from $17,000.00, which is the lowest, up to around, $17,000.00 is about the lowest up to about $27,000.00 and some of them even make up as high as $35,000.00 or $40,000.00 a year.

Q Does any camerman that you know make less than you?

A Not that I know of, no.

Q Are you familiar with the salaries of the other directors/producers in the proposed bargaining unit?

A Yes.

Q What's the highest paid producer/director?

A The highest paid is Jim Schmidt, who makes about $16,000.00.

Q And, how many years has Mr. Schmidt, if you know, worked for the station?

A I believe it's been about fifteen years.

Q What are the other salaries; give me the salaries for example of producer/director Jack Smith roughly?

A About $14,000.00.

Q And, Jim Herring?

A $10,500.00.

Q And, Susan Horowitz?

A About $11,000.00.

Q How positive are you as to the salaries of the management employees?

A I can take an educated guess, like...

Q We'll have testimony; you don't have to guess; they can testify to that when they're on the stand. Do you participate in the Westinghouse disability plan or the stock option plan or profit sharing plan?

A No, no, I don't.

Q Is participation in those plans open to you as a producer/director?

A Well, two of them: the management disability plan is open to our participation and the savings plan is open; there is a profit sharing plan which management is eligible for which I'm not eligible to participate in, a non-contributory profit sharing plan.

Q Do you grant leaves of absence; do you have that authority?

A No.

Q Has anyone ever asked you for a leave of absence?

A No.

Q Has anyone ever told you that you have the authority to grant it?

A No.

Q Do you assign overtime to any employees?

A No.

Q Can you if you want to?

A No, absolutely not; it's forbidden to.

Q Have you ever attempted to?

A No.

Q Do you keep time records or work records or production records or disciplinary records on other employees?

A No.

Q Have you ever been told that you have the authority to let an employee go home early if he gets sick?

A No.

Q Do you have the authority to make changes on your own volition in your work assignment or the work assignment of others?

A No.

Q Do you set your own working hours?

A No.

Q Do you have immediate day to day supervision of the cameramen or reporters or film processors or film editors?

A No.

Q Do you ever have discussions with management

personnel as to the development of prime-time programming for the next season??

A No.

Q Are you ever involved in budgetary determinations for the station?

A No, definitely not.

Q Do you have the authority to commit the station's credit or to charge things to the company?

A No, not that I know of; I may be able to, with prior approval, to charge a minor item at some company or business where they do business with the people but that would only be with specific prior approval.

Q Do you have authority to schedule technicians to work on their days off?

A No.

Q Do you have the authority to check time sheets?

A No.

Q Do you have the authority to effect work load changes?

A No.

Q Is it your responsibility to check the accuracy of employee time records or to be responsible for their safety?

A No.

Q Is it your authority to interview job applicants

and recommend their employment?

A. No.

Q. Do you decide the time for each news segment?

A. No, that's done by the producer.

Q. Do you assign news to reporters?

A. No.

Q. Do you secure replacements for employees who are out sick?

A. No.

Q. Do you oversee the work of film processors?

A. No.

Q. Do you determine company policy about the utilization of manpower?

A. No.

Q. Do you have complete control over Station KWY Television?

A. No.

Q. Do you routinely keep records of employee performance?

A. No.

Q. Are you required to prepare a formal or otherwise over-all departmental reports?

A. No.

Q. Do you make progress reports on employees or beginners?

A No, I do not. I may mention to the assistant program manager that one guy that I work with is not really hacking it; but that's as far as it goes.

Q You don't set your own hours?

A No.

Q Do you decide when, where and with whom you will work?

A No.

Q You can't order employees to work overtime or on their day off?

A No.

Q You don't play any part in determing or posting work schedules?

A No, no.

Q Do you participate or discuss in anyway at all management policies about labor relations or the fall programming or manpower utilization or employment practices?

A No, I don't.

Q Have you ever been told that you have the authority to do any of these things?

A No, I haven't.

Q Were you ever employed by any other Westinghouse Broadcasting station?

A Yes, I worked for WJZ-TV in Baltimore.

Q When you worked for WJZ-TV in Baltimore, what did you do, what was your job?

A Well, I had several jobs there; I started out as a switchboard operator, then I was a cameraman, then I was a producer/director, and I was also a chief director which is the same as a production manager as here.

Q How long did you work there?

A About seven years.

Q As a chief director?

A About a year.

Q What were your duties in that capacity?

A To assign and schedule the other producer/directors; I was responsible for the operation and allocation of studio facilities, scheduling and assigning the studio crew, union studio crew, I was responsible for the day-to-day operational problems as well as supervision of producer/directors, studio crew, and production assistants.

Q Do you do any of those things here?

A No.

Q When you were employed by WJZ in Baltimore, did you ever attend meetings also attended by other supervisory personnel where things such as planning for the fall or planning to use manpower or discussion

of employee performance or discussion of labor relations policies took place?

A Yes, as chief director, I participated in meetings of that nature.

Q Have you ever participated in meetings of that nature at KWY?

A No.

Q Based on your understanding of how a television station operates, can a television station operate without those meetings?

A No, I wouldn't think so.

Q Would you conclude, therefore, that meetings of that nature are now held at KWY even though you're not participating?

A Yes.

MR. BRODERICK: I object.

HEARING OFFICER: It's already answered. What's the basis of your objection for the record.

MR. BRODERICK: Well, for the record first of all he testified that he doesn't know whether such meetings are held but on the basis of some information he would conclude that they are held. He has no direct knowledge of it.

HEARING OFFICER: All right. Objection sustained.

Q (By Mr. Gordon) Do you work as the technical

director on the Mike Douglas Program?

A. I have on occasion.

Q. Is that in addition to your duties as a producer/director?

A. Yeah, that's over and above, and I get a fee for that.

Q. When you work as a technical director on the Mike Douglas Program, who is your supervisor, not his name but his function?

A. The director of the program.

Q. So the director of the Mike Douglas Program supervises you as technical director?

A. Right.

Q. What does a technical director do?

A. He operates the switcher, or the piece of equipment that I described before with buttons and handles on it that punches up the video sources.

Q. Who does that on your program or on the news program?

A. I do.

Q. You have no switcher?

A. No, I'm my own switcher.

Q. Is there also on the Douglas Program an assistant director?

A. Yes.

Q Who does his functions on your program?

A The producer.

Q Do you participate in anyway in deciding which employees will work or which employees will get overtime?

A No.

Q Do you specify or recommend the names of the employees who will be working at a given point?

A No.

Q Do you pick your own film editor, your own cameraman, lighting man, audio man, or your own technicians?

A No.

Q If you wanted to, could you?

A No.

Q I want you to think about this for a minute, Mr. Pyle. Do you in anyway at all play any part in the formulation of management policies?

A No.

Q Are you familiar with the work of, do you know who does formulate company policies, if you know?

A Management policies.

Yes, personnel or labor relations policies?

Yes, the program manager, his assistant and the production manager as well as, I imagine, Mr. Gidel

participates in those decisions as far as personnel and labor policies go.

Q Just to keep the record clear, have yc ever participated in any kind of meeting with Mr lzman and Mr. Little or Mr. Beddow, any kind of a eting, not necessarily a policy discussion?

A Yeah, we've had since I've been there two or three meetings, general meetings of everybody in the program department, presided over by Mr. Salzman.

Q Who is in the program department?

A The program department; Mr. Salzman, Mr. Beddow, Mr. Little, the art department, the studio crew the producer/directors, the news department, the news director, the assistant news director.

Q Have you ever attended any meetings at which just the producer/directors and members of management were there?

A Yeah, we had a producer/director meeting about, well when they found out that we were interested in getting into DGA there was a producer/director meeting.

Q Just so that we have a complete record, could you describe for the Hearing Officer who was present at the meeting and what was said if you remember?

A Yeah, all the producer/directors -- do you want me to name them.

Q Well, was it the five producer directors?

A Yeah, the five producer/directors, the assistant program manager and the program manager, and I believe the production manager was also there.

Q What was said if you remember?

A Basically it was an inquiry...

Q And, if you remember, who said it?

A O.K. It was presided over by Dave Salzman, the program manager; and basically it was an inquiry as to why we were interested in getting into DGA, what sort of inequities we felt were in the present set up and schedules and you know as far as inequities in salaries, vacation, or whatever we were concerned with -- work conditions, work load, what prompted us to be interested in joining the Directors Guild of America; you know in addition there was the idle small talk. It was the night after the Academy Awards. Did we like the Academy Awards. He also mentioned at the end of the meeting that they did have some exciting things coming up, because one of the guys -- I think it was Jim Schmidt -- mentioned that we weren't doing much really; and he wondered if we had anything coming up to do; and Dave Salzman did mention the fact that we did have some sports possibilities coming up as well as some new programming but that these things weren't firmed up yet

and therefore he couldn't tell us about them; but we would learn about them when things were definite.

MR. GORDON: I have no further questions.

MR. BRODERICK: May we take about a five minute recess.

HEARING OFFICER: Yes.

(A five-minute recess was taken)

HEARING OFFICER: On the record.

Mr.Pyle is still on the witness stand and Mr. Gordon has concluded his initial questioning of the witness. Mr. Broderick, do you have any cross examination?

MR. BRODERICK: Yes, I do.

CROSS EXAMINATION

Q (By Mr. Broderick) Mr. Pyle, when you were at Baltimore you described your last job as chief director?

A That's one of the jobs I had there, yes; chief director.

Q And, that's where you described that you were a supervisor?

A Right.

Q And, what was your salary in that position?

A $10,200.00, I believe.

Q And, your salary at KWY is what?

A My salary at KWY is $12,000.00; KWY is the fourth

largest market; Baltimore is the fourteenth largest market.

Q Now KWY puts out over the air things other than news, does it not?

A Yes, certainly.

Q Such as?

A Commercials, movies, talk shows, the Johnnie Carson Show, soap operas.

Q Public affairs shows?

A Public affairs shows, yes; many different types of programs.

Q Now what responsibility do you have in the non-news area?

A The other show that I have, I have been director on a number of shows in addition to news; I was director, I directed the Marsha Rose Show which is a daily talk show; I've directed Speak Out which is a nighttime, well early morning actually; it comes on at 12:00 midnight, it's a public affairs show which is produced by Mr. Shayon, who is a professor at the University of Pennsylvania; I was a director on that program. I don't think I've done any commercials at KWY. I directed transfers which is just transferring film to tape. I also directed kid shows and also directed public affairs shows when Frank Ball was a

producer.

Q Now in your time at KWY in which shows have you operated as a producer/director?

A The only area where I've been a producer/director has been a kid show called Big Kid, Little Kid.

Q How often is that produced or shown over the airways?

A That is done once a week.

Q And, how long have you been the producer/director for that show?

A Five weeks.

Q And, can you tell us what your responsibilities are with respect to that show?

A Well, I direct the program and am also listed as the producer if you can say a producer is somebody, if a producer has no decision as far as budget goes, then I am the producer; if a producer has no decision as far as who the talent will be, then I'm the producer; if the producer has no decision as to when the show airs and how long the show will be, then I'm the producer; if the producer has no decision on who the camera crew will be, then I'm the producer; if the producer has no budgetary consideration, then I'm the producer; if the producer has no consideration as far as the basic ingrediants of the show, then I'm the producer.

Q What producer functions if any do you perform with respect to Big Kid, Little Kid?

A Well, let me give you a little kind of description of the show; it's basically done in cooperation with the Philadelphia Zoo and the Franklin Institute; and they provide the bulk of the program. The zoo brings five or six animals each week which are shown to the children on the show, and the children are booked by a girl who works in the show.

Q What's her name?

A Beverly Jackson.

Q And, what's her position at KWY?

A She is Dave Beddow's secretary and she is also a production assistant; she works on a number of different shows.

Q And, what part if any do you play in...

A You don't want me to finish telling you about the show and what it is, or not.

Q No, I'll get to that. What part do you play if any in discussing or communicating with Beverly Jackson as to the children that are going to be on the show?

A None.

Q What part if any do you play in determining what the content of the show will be?

A Well, although I don't even make the call, she

calls the zoo and she'll ask them whether they are going to bring a duck or a rabbit this week or you know a goat or a monkey; and she calls the Franklin Institute and finds out exactly what they're going to bring, what kind of science experiment. Then she tells me; and then I sit down and I talked with her and the talent of the show, a girl by the name of D. Robinson; we sit and you know I say that well according to Beverly we're going to have a duck or a rabbit, a pidgeon and some pigs on the show from the zoo and the Franklin Institute is going to bring a lazer beam, an aquarium and a spectrum; you know this way the talent has a little idea of what's going to be on the show and she goes ahead and reads up a little bit on your know ducks, rabbits or whatever so that she can ask some questions about them.

Q Who bears the ultimate responsibility for the content of the show?

A I'd say the program manager.

MR. GORDON: I object; it's calling for a conclusion.

Q (By Mr. Broderick) Don't you as the producer bear the responsibility, Mr. Pyle?

MR. GORDON: I object to that also; it calls for a conclusion as to what responsibility he bears; if he

wants to elicit specific responsibilities that he's been told to do by the program manager, fine.

HEARING OFFICER: All right. The objection is sustained. Could you phrase your question, Mr. Broderick, to elicit a more descriptive answer.

Q (By Mr. Broderick) All right. Let's go back to the content of the show again; you've indicated that you meet with the talent and Beverly Jackson and yourself. Now what decisions do you make regarding the content in those meetings with those two people?

A Well, as far as the animals go, the guy from the zoo or the other source that supplies us with animals, The Academy of Natural Sciences, they make the decision as far as animals go; they've got a certain number of animals, and they say, ghee, this week we just had a litter of baby pigs, you know, and we'd like to bring those on; or the macaws are molting this week and the feathers are particular bright, we'd like to bring that on; so that that animal is brought on. The only kind of content decisions that we make, we try to coordinate it, if possible, that you know like if the Franklin Institute says they've got -- Beverly has gone to the Franklin Institute and watched all of their experiments, you know watched their demonstrations -- and if they've got some interesting experiments as far as light goes and

sight, she'll ask the zoo people or the Academy of Natural Sciences' people to talk basically about, you know the animal's eyes; or if he has interesting demonstrations about sound, we'll try to play the animals off that.

Q What input into the content comes from you?

A I'm just trying to think; I don't decide what the Franklin Institute does; they have that stuff already; some of it is verbal and some of it isn't verbal; they let us know and you know they bring it on accordingly. As far as the input into the content is concerned, the origination of the show, when the show was originally conceived, they had dropped, I guess, for budgetary considerations a previous children's show that was going on; and they were interested in doing another children's show with greatly reduced or no cost at all. So, Dave Salsman asked me what I thought about doing a kids show, he asked me through Dave Beddow you know about a kids show; and I responded to Dave Beddow I had done it previously down it previously, done a show in Baltimore that involved animals and I really liked working with animals; and Dave mentioned that the Franklin Institute is another institution; he was interested in institutions that need the publicity but that don't, you know wouldn't charge

us to come on the air, that we could get it for a reduced cost, that it would be attractive; and he mentioned the institute; and I said, well, ghee, I've done a show -- which he was also in Baltimore too -- which he did with me using animals from the zoo; and they didn't charge anything and it was in my opinion an attractive show.

Q So you brought to this show your experience in Baltimore, but I'm still somewhat at a loss to decide exactly or know exactly what your input as far as content is into this thing.

A Well, I don't quite understand your question. I said the animals from the zoo and the Academy of Natural Sciences are decided upon by the two institutions; I mentioned the zoo and the Academy of Natural Sciences and the experiments from the Franklin Institute. Maybe that's why you don't quite follow me, because I didn't go through and explain the entire show. That is half of it where the guy from the zoo brings in animals, and he shows them this is a chicken, this is a chicken's beak, whatever, you know just in simple terms; and then the second half of the show is experiments from the Franklin Institute. We try, you know as far as I'm concerned, we try to make sure that Beverly when she talks to the zoo people, like if the

guy from the Institute has experiments that he can do on light or sound, that when the guy mentions the animals to talk about, you know their eyes if he's talking about light and sight or if he's talking about sound, you know, to say something unique you know about the animal's hearing.

Q So to that extent you try to coordinate the zoo's function versus the Institute's function; is that right?

A Yeah, we try to make sure, you know, that they're not talking on opposite ends; you know it's common sense.

Q Suppose a dispute arises between you and Beverly Jackson, is it?

A Yes, correct.

Q As to the content, who resolves that dispute?

A It's pretty much a democratic process between Beverly, myself and the hostess of the show, D. Robinson. Beverly might say something like, Jay, being the guy from the Franklin Institute, has some nice things on sight which I would like to use this week and an experiment with a lazer beam; and she may say I want to put sun glasses on all the kids and you know have them look at the lazer light; and I may say something like, ghee, from my knowledge of lazers, that would blind all the kids; or if it's a question of, you know say we've done two weeks on sight and you know the

guy has run out of experiments on sight and he wants to do it on sound and we're on a loss of what to do now -- whether to go to sound or whether to go to communications; let's say Beverly might say, let's do communications; and I'll say well that's a good idea, I'll say since we did the eyes, let's do the ears; and if she likes it and D Robinson, the head hostess, likes it, then like I say it's pretty much decided in a democratic process between the trhee of us.

Q Suppose democracy doesn't work; don't you have the authority to make the final decision as to what will happen?

A I don't know; you know it's always been a democratic process; if they both feel strongly about it, they can overrule me; they have in the past. I mean it's happened that way; the two of them will get together and say, you know in our judgement we really think that such and such should be done; and I'll say, well you know O.K. if that's the way you feel about it. I feel that you know they're women and they know children and their judgement is good too and two heads, you know their judgement would overrule mine.

Q In other words you may be persuaded by their argument as women to adopt a certain course of action; but if you're not persuaded, you would have the

authority not to adopt it, isn't that correct?

A I don't know; I guess I could say let's do sight instead of sound on that type of minimal level; yeah, I could say, but if they objected strongly enough, I imagine they could have recourse to go to Dave Salzman or Dave Beddow and say we really thing that Pyle is way off base and that you know they could come back to me and say, you know do something else, do what they suggest.

Q In other words you're saying they may try to go over you if they don't like the decision you reach; is that right?

MR. GORDON: I think the record speaks for itself as to what he said.

A Yeah, on that kind of a minimal level, you know it's never come to that; you know it's never come to a case of whether I had the authority to say this is what it will be and this is not what it will be; you know any situation where we've had a conflict of interest, it's always been that if Beverly and myself felt one way, then we did it; if Beverly and D felt another way then we did it; you know it's kind of a democratic, what I'm trying to say, I guess, is that the situation has never come up where I felt strongly enough or I've never been told I had the authority to, you know,

completely say this is what will happen and this will not happen.

Q Were you ever told that you were considered to be part of the management group at KWY?

A Oh, yeah, many times, especially since we were interested in DGA.

Q Well, let's take before DGA; you said you had been told many times. Now prior to DGA, were you ever informed that you were considered part of management?

A I'm sure I was, but I can't recall specific incidents; I'm sure there have been occasions where, well one occasion where they've had management -- the studio crew is anticipating going out on strike, and they've had management sessions where they've trained management to operate studio equipment; so, we've been classified as management there along with the secretaries and the salesmen.

Q Have you ever objected to anyone's classification of you as management?

A No, I wouldn't say openly; I would say privately or with others of my piers or with the cameramen, we've had discussions that you know how can you guys be management on the salary that they're paying you and how come when Christmas and New Year's comes up you guys are here working and management isn't here; how can you

guys work crazy hours, weekends, eight days a week or seven days a week, fifteen days in a row and management doesn't.

Q Now suppose you made $10,000.00 a year more than you make now, like you did before this hearing, would you then consider yourself management?

A Not if the rest of the conditions that I mentioned, you know the fact that we get less vacation and holiday time than other management, the fact that we work, you know longer hours, more hours than management does, different hours, weird hours.

Q Then basically what you're saying, if I understand you, is that your salary level and your hours of work lead you to conclude that you're not management; is that right?

A Those are among the things that would lead me to believe that.

Q They are the major factors?

A No, I would say there are others; the others being that we're not included as far as discussions, about company policy, if a decision is made about a program, we aren't considered, the producer/directors aren't involved in it.

Q Let's take Big Kid, Little Kid; you are a producer/director on that show, aren't you?

A That's what I'm called.

Q Aren't you consulted and considered as to the format of the program, the content, and that you contribute something to it?

A Yeah, that's one half hour show I do a week, you know, in comparison with a whole fifty or sixty hour week, since I've been there.

Q But, you've done other shows?

A Not since I've been with KWY TV where I've been considered and asked about policy formulation or contributed in the show; maybe there is for suggestions like a suggestion box, which you know I have a lot of pride in my job; I'm more than willing to contribute suggestions on things that I feel that are wrong; I don't care if I'm management, union or you know half way in between, whatever; you know if I want to do it, I want to do it the best of my ability. And, if I see something that is going wrong with it or I feel that you know I see a problem developing, you know I want to make a contribution or suggestion.

Q Now let's get back to Big Kid, Little Kid. We've discussed the content of the show and your functions relating to that. What other producer functions do you perform concerning that show?

A What other producer functions are there, you know,

for a person to perform; like I said, if you want to consider budget, I have no authority or decision as far as budget is concerned; as far as the time the show will air, you know, I have no decision on that matter; as far as how long the show will go, I have no decision in that matter; as far as who the talent will be, I have no decision in that matter; as far as who the camera crew will be, I have no decision in that matter. An individual not associated with the industry normally thing of a film producer; and when they think of a producer they think of someone who has over-all responsibility for that show. But, in those major areas you know I have no say-so or I'm not included in any decisions about them.

Q You don't feel that you have over-all responsibility for the end product that goes out over the air on that show each week?

A I push the buttons which put the video on the video tape; and in that sense, you know I have the last say of what goes on the video tape that goes out over the air. As far as the over-all responsibility for the shop, you know maybe I don't like the talent they have on the shop; I have no say in that. Maybe I don't like the camera crew that I work with; I have no say in that. Maybe I think it would be better as a

fifteen hour or an hour show instead of a half hour show; I have no over-all responsibility when that show goes out over the air; maybe I think the show should originate live from you know Independence Mall. I have no over-all responsibility.

Q Let's take those four that you just mentioned. Do you think that the show ought to be fifteen minutes or it ought to come from Independence Mall or the camera crew should be changed?

A I think that we ought to have a budget for the show; that's the first thing.

Q Have you discussed that with anybody?

A We've been told that we have no budget.

Q What about the other functions?

A I have never discussed it. I mentioned the fact that one of the areas that it would be nice to get animals from, you know people called and suggested you know we've got animals; we'd like you to use them on your show, but it will cost you; and they called Beverly and she asked, and they said no way, you have no budget for the show.

Q What about your director functions for the show; will you describe those for us?

A Sure, I sit down at the switcher, the piece of equipment which I previously described; it's a two

camera program; I punch between various cameras, between a tight shot of the animals or a wide shot of the animals or whatever. I mean in a live studio show like that, which it is a studio show, you're basically selecting from video sources and the video sources are your two cameras.

Q Let me see if I understand what you're telling us; that with respect to the show your directing function is limited solely to punching buttons?

A No, you stopped me before I completed; I said that's the primary thing I do, and that's the basic thing, that's eighty-five percent of it; but that's the most important thing as far as I'm concerned. You know if I take a tight shot here or if I take a wide shot here, that's what makes the show look good or look bad, you know according to my particular tastes and judgement. You know if I was doing this room, I might take a wide shot and a tight shot here and a tight shot on me or maybe I would just want to sit on a wide shot; that's you know how the thing will look best, and that's the most important thing as far as directing goes.

Now there are other ancillary functions; I keep a time on it to make sure it doesn't go past the time that I've been allotted for the show; I physically carry the slides that are used on the show to the projectionist; I make

sure that the tape order which has been signed by the production manager is in the tape operator's hands before I record the show; you know, little things.

Q What type of crew are we talking about while this show is going out over the air, who's there?

A There's the standard crew for a tape session; it's two studio camermen, a lighting man, a stage manager, a prop man, and on my show there's also a boom operator, a projectionist, a video tape operator, an audio man; that's about it. You know there are all sorts of other people in the building; you know there's a video man who rides the video; those type of technical people.

Q What about the talent?

A Oh, yes, I'm sorry; there's talent, the hostess of the show, and also the people who are the experts from the zoo and from the Franklin Institute.

Q Aren't you responsible for directing that crew that you just described?

MR. GORDON: I object, as to the use of the word directing; obviously it means a variety of things.

Q (By Mr. Broderick) Who tells them what to do?

A What do you mean who tells them? What time to come back from lunch so that we can start the show?

Q Yes, I want to know who tells them what to do?

A I tell them to pan left or pan right depending on what would be a good shot or a bad shot or to truck in or truck out or dolley left or dolley right.

Q Suppose a cameraman fouls up, who yells at him?

A Ron Little.

Q Not you at all?

A I might say I didn't like that last shot, but I don't yell at him, no.

Q What I'm trying to get at is...

A Because what happens if I yell at him, I have no authority over the guy, and the next time I work with him the guy will screw me up.

Q What I'm trying to get at, Mr. Pyle, is that this crew is just not a group of autonomous individuals going about and doing what they feel or contributing to the show in the best way that they feel?

A Certainly not.

Q There is somebody there who is responsible for it, is that not right?

A The director tells them what to do as far as the operation of the equipment is concerned, yes.

Q And, that's what you do, don't you?

A That's exactly what I do, yes, on the phones.

Q To that extent you're responsible for their performance on the show, aren't you?

A I don't know that I'm willing to go that far, no; no, I'm not responsible for their performance on that show,no; their own individual training, their own individual ability, if they worked eighteen hours straight, that's responsible for their performance on that show; the guys they hire are responsible, I'll get like two weeks ago we got a cameraman who didn't know what he was doing; the guy has been there for you know a couple or three years, but he doesn't know what he's doing; so I have no control over the shots that he gives me; I'll tell him that I want a tight shot of this microphone and he gives me a shot like this; so I get a shot like that and poor quality shots throughout the show and the whole show looks bad.

Q What do you do in that situation where you tell the cameraman what type of a shot you want him to take and he takes something different?

A I asked him why he took a different shot, and he said well I don't know what you mean, I didn't know what you meant.

Q And, then what do you do; do you explain to him what you mean?

A I explained to him what I meant. If it's bad enough I may go ask Ron Little if there's anything he can do about this guy; you know he is constantly giving

us a problem.

Q And, you say that when something like that happens and the show goes out over the air, the show looks bad?

A In my opinion, yeah; maybe in his opinion, since he gave me the shot, to him it looked good; but in my opinion it didn't look good.

Q And, you're the producer, right?

A Producer/director.

Q The director of the show?

A Right.

Q And, who has the responsibility, in your view, for taking the blame, if you will, if that show goes out over the air looking bad?

A The program manager may ask me why everything was shot too loose or why the zooms were sloppy; and I'll say you know I had poor tools to work with, a poor cameraman.

Q Don't you feel that it's your responsibility, Mr. Pyle, to see that that show goes out over the air in the best possible way it can?

A Certainly, any show that has my name on it or any show in the station that I'm affiliated with that I can contribute to or help, you know or make it better, I want it to be the best show that it can.

Q Now what about the talent on the show; what function do you play viz a viz the talent while the show is being taped or going on over the air?

A About the only function viz a viz the talent is I relay time cues; looking at my watch, I'll say we have five minutes to go; and I'll give a five minute cue; if we have four minutes to go, I'll give a four minute cue. The show has to be completed in the time that we're alloted for; and an entire half hour show runs 28:45; so it has to be completed by the end of that time period.

Q And, you're responsible to see that it is, aren't you?

A Yes.

Q Just like that producer that you were talking about, if that's the proper name, in the news area; isn't that right-

A Similarly, yes.

Q Now with respect to the news area, what time do you normally arrive at work at KWY?

A About 3:15 or 3:30.

Q And, the first news program that you direct goes out at what -- 6:30 or 6:00 o'clock?

A 6:00 o'clock.

Q All right, now when you get there at 3:15, do you

immediately start working on the news program for 6:00o'clock, or what do you do?

A. It's my contention, and I've discussed it with Ron Little but he feels otherwise, so therefore I still come in at 3:15, but, and the producer feels that the same way, that I have nothing to do at that time or that you know he doesn't need me and there's not a whole lot I can do; I can't get up and get the art cards until about 4:15 or 4:30; there's no format out; well, there's a format out, but I can't mark it until I get at least some of the scripts. Well, I'll talk to the producer to see if there are really any tricky things comeing up or you know if I've got a lot of fancy effects to do on the switcher and that type of thing.

Q. Well, then from 4:15 to 6:00 p.m., now what functions prior to going on the air do you actually perform with respect to this news program?

A. Do you mean in addition to the ones that I've told Mr. Gordon about before.

Q. No, I just want to take you through this time period to see if I understand exactly what you say you perform or don't perform during this period of time?

A. I'll reiterate what I said before then. Let's see, at approximately 4:00 o'clock or five minutes after 4:00 or ten minutes after 4:00, I'll go up to the art

department and either wait for or pick up the visuals that the producer has ordered -- five or six chroma-key cards, some slides maybe, a couple of still photographs; I pick those up and bring them back to the news room. And, I look at the formats and see that he's got five or six people listed or that he's got Mat Quinn or Jessica Savitch or Al Meltzer; and I'll ask the producer are these people going to be studio live or are their voices going to be on the air through cartridge or are they all going to be on film; and he'll inform me as to what roles they'll be playing; and I'll mark it accordingly on my format and make a note to myself that Trudy Haines is going to be on film and not on live in the studio; then I won't have to worry about making sure that she shows up, making sure she's in there before I punch a camera up or ask the cameraman to take a shot of her when she's not there.

Q Well, suppose she's going to be live, what do you do then?

A I just mark down you know that she's going to be live.

Q You said something about making sure that she's there; what do you mean by that?

A Well, I mean I can't tell a cameraman to give me a shot of Trudy when she's not there; unless I ask the

producer whether she's going to be on film, cart, or live in the studio, I don't know whether she's going to be there or not. Once I've found out that information from him, I'll call up the video tape operator to find out where he's going to put the various video tapes, whether he's going to put them on Machine 2 or Machine 6 or Machine 3; so that let's say that when Al Meltzer has a sports tape, I know whether it's going to be on Tape Machine 2 or Tape Machine 3.

Q So you've had discussions about the video tape operator. What about the cameraman?

A Do you want me to go through it in chronological order.

Q Pursue it chronologically?

A Then generally in a news show there's a great deal of news film stories; O.K., they've shot a lot of film stories during the day, and they edit these stories before they put them on the air. Now sometimes they don't get them all edited together; because there are so many, they try to put them on one big reel,O.K., you know like six stories on one big reel. And, sometimes they won't get them edited on time to get them in the reel and they'll have to run them in separates. I'll call the film editor and ask him is he going to have everything done; and if not, he'll tell me

no, the Mat Quinn report on Mayor Rizzo won't be ready and we'll have to run it separately; I won't have it in the package. I said, O.K.; and I'll call the projectionist and tell him that the Mat Quinn report on Rizzo is going to be separate and ask him what projector he's going to put that on; so that when it comes time to roll the film on the right cue on the copy, I don't roll the main package which he may have put on A-2, I roll the separate package which he put on F-7. That will take us to around 5:00 o'clock.

Q Just so that I understand, during this period of time you've discussed a matter with the audio man...

A No, I haven't talked to the audio man.

Q The film editor?

A The film editor, the projectionist, the video tape operator, the projectionist. The audio man, I'm glad you mentioned that. At about 5:00 o'clock he comes into the news room and says is there anybody who hasn't cut a cartridge; a lot of times the talent will forget that, you know they have to cut a cartridge; so he comes in and reminds them that he's available to cut cartridges, if anybody wants to cut a cartridge. A cartridge being for those who may not know, it's you know an audio tape casset device for playing back somebody's voice. And, then at that time I will also

relay to the audio man -- now if he doesn't come in, I'll go find him -- where the tapes will be and where the films will be; I'll tell him that the sports tape will be on Machine 2, that the Jessica Savitch tape which was recorded off the noon news will be on Tape Machine 4, so that he knows where these machines will be so that he can take the correct audio source. I tell him the main news package will be on A-2 and the separate package will be on F-7 from information that these people have given me. At that time some of the script has begun to trickle in, and I'll go ahead and start marking the script; and that will take me right up almost to news time. Now you keep mentioning the cameramen...

Q Wait a minute; why don't we explain for the record what you mean by marking the script, what you're doing?

A Certainly. From the producer you get a piece of copy which is just printed, you know just a typed out news story, say a twenty second news story on the activities at city council today; and the first ten seconds of it may be an introduction to it and the last ten seconds may be a ten second bite of film, an interview with Councilman Schwartz, let's say. So, I'll go through and see that you know after the sentence

"And, here's what Councilman Schwartz had to say," I'm supposed to hit the film. Now it takes three seconds for a projector, when the guy rolls the projector and the projectionist activates the machine, it takes three seconds for that machine to get up to speed; so I can't say to roll it when the guy says "And, here is a report from Councilman Schwartz," because it won't be up to speed. Now being up to speed, it will be going a lot, actually it won't be going at normal speed and the guy's voice, well you've heard it, you've seen film where the guy is talking w-e-e-l-l and it comes up to speed, or he's reading "develop record by way of testimony," and that starts up "dee-veeelll-oped" just like your keying up a record. So I've got to start that film rolling three seconds before I want to take it. So, what I do is go back before the last word in the sentence, "here's what he had to say," and estimate three seconds based upon the speed that Vince Leonard reads or based upon the speed that Mort Crimm reads; I'll start that film rolling three seconds before I want to hit. With video tape I'll start rolling five seconds before, and there are some machines that have instant start capabilities so I'll roll it on the word "said." Now in marking the script, it has been determined that we

take the wide shot on camera one; we beging the shot, we cut to the talent with camera two. Now if the producer has decided that he wants the talent, he wants to cut to the talent straight off -- I don't know if you're familiar with our news cast; they all walk in and sit down; then we cut to a tight shot of the anchor man, sometimes we cut to a tight shot of the anchor man in chroma-key -- chroma-key being with a visual behind him -- sometimes we cut to him with just plain by himself; you know according to what the produder set out on the script. You know at the beginning of the show we cut to the talent and with chroma-key we cut to the talent just straight head on. Obviously I can't relay all that information to him, you know on the opening shot we cut to him on chroma-key, at Page 6 we cut to him straight on, on Page 7 you have to break to get weather, Page 9 -- you know I just can't give them all that information in a lump sum. So, what I do is I mark it on the script, like if I know on Page 3 that camera two according to the format and the script has to be over on a card, a picture, let's say, a still picture, I know if he has to be there on Page 3, on Page 2 I tell him to break and get that still. So, that's information during the course of the show; but actually before the show, unless there's

something tricky right at the opening or unless there's some really difficult move, you don't really talk to the cameramen a whole lot before the show. I would talk to the stage manager; now the stage manager is the guy who gives the cues to the talent, relays information that the producer may want to give to the talent.

Q Let me stop you right there. Where does the stage manager get the cues from that he relays to the talent?

A From the producer through me.

Q In other words you give it to the stage manager, is that right?

A I relay information that the producer has given me to the stage manager, right.

Q This is on the show, while the show is being [illegible]med then?

Yeah.

Q You give him cues?

A He holds up cue cards. I don't give them.

Q You don't give them?

A I relay information; I'm not allowed to give them to the talent.

Q Because that would violate a union contract, right?

A. The producer would get very upset because he has over-all responsibility for the show; and say he wants sports to run for four minutes and I tell Meltzer to hurry up and he finishes in two and a half minutes, that fouls up his whole show.

Q. Well, let's keep going; you've talked about the stage manager.

A. Do you understand why.

Q. I understand why you've got to go through the stage manager.

A. Do you understand the fact that I can't relay cues on my own to the talent through the stage manager. He's in charge of the program, and he decides how long it's going to be and whatever; and I have to relay his information.

Q. He doesn't decide how long it's going to be, because we all know that it's going to be a half hour show?

A. Yeah, but some days it runs twenty-five minutes if there's an editorial; some days it runs twenty-two minutes if there's a political spot.

Q. What else do you do before you go on the air?

A. The only thing I can think of, which I started to mention, is that I talk to the stage manager; he comes and picks up all the visuals from me; and I give him, you

know this pile is for camera three, this pile is for camera two; and he takes those into the studio.

Q Prior to going on the air, you have reviewed the script or the format?

A Both.

Q And, do you look at it to see if it will cause any problems with the policy of the Federation Communications Commission for example?

A No.

Q You don't?

A If I see blasphemy in there or something, I may mention it to the producer, look you know, there's, you know, there's a swear word in there, did you miss it or something; but if he says, no, I intended that to be in there, you know I have no, it goes on; I might say, are you really sure, I mean as far as I know that's against the law. But, I mean it's his function to include it in there if he wants. As a matter of fact, a case like that happened just last week where, two weeks ago on Mat Quinn's series on special reports on interviews with the police department; there were a lot of words in it that I thought were pretty questionable; and when I mentioned them, the guy said, no, they will go on.

Q YOu did feel it was your responsibility to mention

these things when they come to your attention, is that right?

A. I feel obligated that you know just on the grounds that if the guy missed it and it goes on the air, you know I'd hate to see the station get in trouble for something like that just on an oversight; I mean everybody is in a hurry in there, and things happen at a frantic pace ; and a lot of things are overlooked.

Q. Now let's get on the air; what do you do while you're on the air?

A. Well, as I mentioned, you know I operate the switcher; I guess the easiest way to do it will be, you know go through it; like say we go on the air; the computer has control over the station operation. I punch up the opening shot, I reach down and punch up camera one on the switcher which is the opening shot; and the computer,at the time designated by the log, switches it to studio B where we do the news out of at the designated time, now at 11:02:31, whatever it is on the 11:00 o'clock or 6:00 o'clock straight up or whatever. At that time we're supposed to do the opening music; so I cay cartridge to the audio man.

Q. Who do you say it to?

A. The audio man.

Q. O.K.

A He's the third person in the control room -- the producer, myself and the audio console is also located in the control room.

Q O.K.

A I'll say spin the cartridge.

Q And, that's the audio man?

A Right; he sits behind me; that's why I motioned behind me.

Q All right.

A Now we also have a video tape animated opening which comes in off of tape machine five, where the animated opening is loaded. So visually what you've got is a wide shot and you've got some music and you know Eye Witness News coming in there in words; and I'll say cue the talent in.

Q Who says that?

A I say cue the talent in.

Q To whom do you say that?

A The stage manager. They walk on in and sit down behind their desks; you mike and cue the talent; you know they feed the music under so that it's not an abrupt cut from the music to when the anchor man talks; and you cue them to start talking. Now I think what you're getting at is that these aren't things that the producer says to me directly by word of mouth before I

say them to the station manager; but these are things that are indicated by him on the script and the format indicates we take opening and cartridge on the format on the script. If you have to say everything, you know just for convenience; so some things he has to write down; he can't say everything.

Q You may not know what I'm getting at, but go ahead.

A I said if that's what you're getting at.

Q Go ahead.

A Do you want me to go through a whole half hour news show.

Q I certainly do.

A Can I get a drink of water first.

HEARING OFFICER: By all means. Gentlemen, it is now five minutes of 12:00; this witness has been on the witness stand substantially since about 10:20. I propose that we take about an hour lunch break and continue with this witness, since Mr. Pyle will probably be testifying at some length. Since we are now embarking on a half hour news program, I think we should continue with, we'll adjourn now until 1:00 p.m.

(Whereupon, at 11:55 o'clock a.m. the hearing in the above matter was adjourned, to reconvene at 1:00 o'clock, p.m., the same day.)

AFTERNOON SESSION

1:00 o'clock p.m.

HEARING OFFICER GRAHAM: On the record.

Whereupon,

RICHARD CHAUNCEY PYLE

resumed the witness stand and having been previously sworn was examined and testified as follows:

HEARING OFFICER: Mr. Pyle is still on the stand and we'll continue with the cross examination by Mr. Broderick; and as I recall when you left off with Mr. Pyle he was describing the one half hour news program which occurs during the evening hours, I guess, five days or seven days a week.

THE WITNESS: Yes, they view them seven days a week. I'm just involved in Monday through Friday.

HEARING OFFICER: Alright, proceed, Mr. Broderick.

CROSS EXAMINATION (Continued)

Q (By Mr. Broderick) I think we broke off, Mr. Pyle, when we were at the point where we had gone on the air, the group had trooped in, and then you had cued and centered on the main performer.

A Right.

Q All right.

A O.K., the talent starts talking. Now one thing that did occur to me during lunch, you mentioned the

over-all responsibility and the fact that we have the over-all responsibility, you say we do; actually even more, if you really want to get into it, the projectionist or the video tape operator has more over-all responsibility for what goes out on the air; I mean he could put up any tape that he wanted to or anything that he wanted to; he just sets it up; you know there's nobody there to say take this tape and put it up.

Q Of course, that's why you're there, to make sure that doesn't happen?

A No, no, I don't supervise him in that aspect at all.

Q Go on; tell me what you do?

A After that talent starts talking and in just a hypothetical news cast; we'll say the first thing we come to in the news cast is a film; at some point, again I don't know what his last words would be, say "this report from the field,"; three seconds before the word "field" I would roll the film. When he finishes talking, punch up the film, stay with it for the duration that's indicated on the script and the format and the appropriate out-cue, again whatever is listed on the script; they list the person who is talking on the script and their last couple of words.

On the appropriate out-cue I come back to the talent in either a straight mode or a chroma-key mode, depending again on what's listed on the script. The talent will keep talking; he at that point may go to another film, which again the procedure is the same; he may go to a video tape where the procedure is the same, with the exception that that is a five second pre-roll on video tapes or if it's on a particular machine, it's an instaneous roll. Say he goes through six films and tapes.

Q Who is he?

A The talent.

Q All right.

A So the talent goes through six films and six tapes and then we get to the point where it's indicated on the script that we go to a commercial. I'll notify the computer operator that there is a commercial coming up; and with the format that is set up, the guys will take a wide shot of the set before the commercial. I punch in the wide shot and say it's yours computer and he takes it and lays in the commercials; the computer operator just for the record is a member of the union studio crew and he operates the station during the commercial breaks and indeed when there is no live programming on the air, he's in charge of the operation.

After say a typical two minute commercial break, he'll say stand by; it's coming back to you; and I'll punch up the first shot. Say they want to come back in chroma-key of Vince and a little red school house because we're going into a school house, that will be there when he finishes the commercial. On his switcher upstairs, he'll punch up or he'll have the computer switch it right to Studio B. And, I'll have that shot punched up and Vince will start reading.

Q Vince is Vince Leonard?

A Yes, the talent will start reading, pardon me. Talent will start reading, and he reads the same script that I go off of also; he reads up until we get to another film or tape; say he does a couple of those and then it's time for sports. He then reads from the copy that he has; and he says "and now here with the sports is Al Meltzer."

Q Who is giving any cues during this period of time?

A The same ones that I indicated to you before the break or I indicated to you earlier; I'll give them a standby coming out of the film because say the film ends at one minute and ten at the out cue, "Eye Witness News From Norristown, Pennsylvania"; and I know that in one minute and ten we're supposed to come out and you know like at a minute and five I'll tell them to stand by.

And, when we come out, he starts talking again and like I say he reads some more copy; he reads over a couple of stills; and when he gets to sports he introduces the sports talent. The sports talent begins talking, again on cue; he goes through the sports; and we come back and maybe we'll do some more news. Then we go to weather; the weatherman is a little different from an ordinary situation; he takes, well he takes cues because the producer tells him, you've got three minutes, two minutes, one minute; but the weatherman also makes up his own cues, and then he takes all that he's going to read, since he doesn't sit at a desk and have the opportunity to read off a script, he writes down what he's going to say on cue cards and gives them to the stage manager and the stage manager holds them up for him to read. He goes through the weather, the national weather; and then the local weather; we'll look at some of the dials, the forecasts. He throws it back to the talent, the anchor man.

Q Again being cued to do it?

A Right. Again in the same procedure that I mentioned to you earlier, either by the producer's direct spoken word or what's indicated on the format, in the written script. He does more news; either you know going to more films or tapes, cards, slides, pictures;

and then we get to the end of the show. At the end of the show the producer may tell him drop Pages 23 and 24, pardon -- he tells me and I tell the stage manager who tells him, drop Pages 23 and 24, I'm heavy, or I'm forty seconds too long or I'm forty seconds too light; the talent does so, he drops the pages. We finish the show; we play the theme music that's indicated in the format in the log and close the show up.

Q What relationship do you have with the cameramen during the presentation of the news?

A It depends on the particular situation; I may tell, as I indicated to you earlier, well, I want him on camera two and camera one has to set up for a chroma-key because the producer wants chroma-key on Page 3, I'll tell camera one to set up for chroma-key so that I can take chroma-key; and he sets up for chroma-key. Now I may tell him that we've got weather coming up in three pages, break for weather, camera one break for weather. Instructions of those natures.

Q Instructions of those natures to the cameramen, is that right?

A Correct, based upon what the script and format indicate.

Q What relationship do you have with the audio man for the presentation?

A The same sort of thing; I may tell him, it says here on the script you've got an audio cartridge coming up or you've got a video tape coming up. I'll remind him that I told him earlier that the tape was on Tape 6; sometimes they forget or sometimes they didn't write it down. So, when we go to video, they should take the audio on Tape 6. I'll tell him to stand by, right at the beginning of the program I'll tell him that we've got the opening cartridge coming up, stand by; I'll say spin it; to roll the cartridge.

Q Do you follow...

A Basically the same sort of relationship as with the cameramen.

Q Do you follow the practice of submitting any kind of reports concerning the news program?

A Yeah, Dave Beddow, the assistant program manager, had asked me anytime there were any discrepancies to list them and submit them to him as far as, you know, you know what happened; if you told the cameraman to pan left, did he pan right; why was there no tape when Vince lead into a tape; you know did I say play Tape 4 when I should have said play Tape 5. That type of thing.

Q And, in those reports do you make it a practice or maybe not a practice, but do you comment on the performance of individuals, the technicians?

A Yes, he asked me if there is a discrepancy due to a human error, yes, to note that, to note any error for any reason that it goes wrong, why it went wrong, whether it was machine failure or whether it was human error or whether the producer you know listed too many things in a row to do and we couldn't do it or whatever. This was something that he asked me to do because I was on the scene and involved in it, and I'm witness to everything that goes on there.

Q And, do you do it with respect to both the 6:00 and 11:00 o'clock news?

A Yes, I was asked to file a 6:00 and 11:00 o'clock, because I'm there and integrally involved in the production of the thing and nobody would probably know better than I why something went wrong if it did.

Q I think you did testify that with respect to employees, new employees within their probationary period, that you...

A I don't recall that term "probationary."

Q Did you testify that you may make some comments along the line that somebody may not be hacking it for example?

A Yeah, I recall saying that. What do you mean by probationary.

Q Well, that's somebody that's hired for a certain

period of time, and they're probationary employees.

A O.K., right.

Q Because that's what I'm talking about, not in a disciplinary sense, but a new employee. Don't you make it a practice to comment on the performance of those employees during that period of time?

A Only within the scope of the note that Dave has asked me to file with him; or again as I mentioned in discussing Big Kid, Little Kid if somebody does a really crummy job and the product, you know I feel I'm really unhappy with it because of the way that this guy worked, you know I mention the fact to Dave or somebody you know that we don't work well together or you know he doesn't seem to be able to do the job.

Q And, you'll mention that?

A Yeah, if it's a continual thing, and you know I don't think that he's doing the job and it's fouling it up and I'm not able to work with him; you know I'll say I don't think he's really working too well.

Q Before reporting that to Mr. Beddow, will you attempt to straighten this chap out?

A I'll ask him why, because when he was hired I would presume that you know he was, he supposedly had some sort of instruction from somebody on how to work a camera or on how to be a stage manager or how to

be an audio man; I'll inquire of him when I ask for a tight shot, maybe you know whoever instructed him wherever he was broken in, maybe to him tight shot meant wide shot and wide shot meant tight shot; and I'll ask him why he didn't take a tight shot when I asked for a tight shot.

Q And, depending upon the explanation, you may try to straighten him out before you report to Mr. Beddow about him?

A Well, I'll say to him when I say tight shot, I mean you know like so, I don't mean like so; you know I'll explain to him what I meant. And, if he mentally can't comprehend you know when I show him that.

Q Then what do you do?

A Well, as you suggested I'll mention it to Dave or Ron, you know the guy, I can't seem to work with him, that he's not doing, he can't hack it.

MR. BRODERICK: No other questions.

MR. GORDON: I have some.

REDIRECT EXAMINATION

Q (By Mr. Gordon) Let's pick up right there, Mr. Pyle, where you said that you can't seem to work with someone. Have you ever said that about technicians or cameramen?

A Only in the scope of the news report that I file

with Mr. Beddow.

Q What happened after you made those comments?

A Nothing, the guy was kept on; he was there, he was there the next day, he was there the following day, he is continually scheduled back there.

Q Throughout your testimony you talked about, a lot about what you did during the course of preparing for a program; and during the program isn't it true that all of these things that you are going up and getting -- the cards from the art department or making notations on the script and indeed getting information and talking to other employees -- isn't that all going towards performing your job or going towards telling them how to do their job?

A No, it's stuff that I have to do; I can't roll the tape unless I know where it is.

Q Throughout your testimony you kept talking about you wouldn't let a program go out on the air unless, you wouldn't want it to go out on the air unless it met your standards? Are you talking about artistic judgements or some other kinds of judgements?

A Well, yeah, I feel that I want to do something that I'm proud of; I don't want to embarrass myself and embarrass the station by putting on something that's less than what I think is good quality.

Q Good quality in what sense?

A Artistic, you know it looks goods.

Q When you cue a talent or you reach back and say cartridge or you tell the cameraman to pan from the left from the temperature dial to the right to the humidity dial, is that your determination or is that on the script?

A It's on the script and format; and as far as telling a cameraman to pan left or pan right, it's not so much of making any great decision or coming to some great conclusion; it's a case of, I don't know, the best example I can think of is, I guess a guy on a quality control line, some sort of an inspector who looks at, you know, one of these things that comes down the line; and then you know he's got a certain set of criteria to judge it by, whether it's a good shot or a bad shot by the criteria passed on to him by his superiors; and if it doesn't conform to what it's supposed to be, then he throws it out or tells the guy that it's a bad shot. You know it seems that you're trying to lead up to that it's a big decision when you tell a cameraman to pan left or pan right; it's indicated on the script, it's indicated on the format; it's indicated in talks with the program manager and the assistant program manager has with the producer/directors. I know most of the guys

have been told, you know after we do a show, you know we want the show done like this -- more quick cuts, more zooms, more pans; you know they'll tell you what they want you to do; you've got these criteria to judge by and then you use them in telling a cameraman what he's supposed to do.

Q When you were talking about a person named Trudy before, she's a news reporter?

A Trudy Haines, yes.

Q Now if Trudy Haines is on tape, fine; you don't have to worry about saying to look at the script and say to the cameraman tight shot of Trudy?

A Yes.

Q And, if she isn't there and she's supposed to be live, you do have that problem; and I think you testified that you have to be sure she's there so that you won't give directions to take a picture of her when she's not physically in the studio. Is it your responsibility to call her up and tell her to get into the studio?

A No, it's the producer's job to make sure that they're on the set. I will ask the stage manager if she's there. You know it would be foolish for me to say stand by. I'll say is Trudy there, and he'll confirm, yes, she is; if he says, yes, she is, I'll say standby

Trudy; if she's not there, I'll say relay the information to the producer and he'll decide whether to drop the film and her report altogether or give a commercial cue and we'll break and try to find her, canvass the ladies room or whatever and try to see if we can find Trudy.

Q Now that on the program that you have some producing functions as well as just direction, Big Kid, Little Kid, suppose you don't like the hostess; can you get another hostess?

A I've already indicated at the beginning that I didn't particularly car for the hostess, but she's still there. I don't have a say in that; I mean they decide that she's the hostess and she's the hostess.

Q O.K. Suppose you're reading a script down in the news room before the news program and you see some really obsence language in it, as we talked about; can you take that out; you're up in the control room and you know on Page 4 of the script there's this language you don't like and you know for sure that it violates some law; and when the talent is on Page 3, can you say skip Page 4; can you do that or clean up the language on Page 4?

A No, I can't do that, not without checking with the producer first.

Q If you check with him and he said I want that language in, could you take it out anyway?

A No.

Q Is that beyond your authority?

A No, it's in there.

MR. GORDON: I have no further questions.

HEARING OFFICER: Mr. Broderick?

MR. BRODERICK: I have no further questions.

HEARING OFFICER: I have no questions of the witness. You are excused.

(witness excused)

MR. GORDON: As my next witness I call Mr. Jim Schmidt.

HEARING OFFICER: Mr. Schmidt, please take the witness stand.

Whereupon,

JAMES GORDON SCHMIDT

was called as a witness by and on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows:

HEARING OFFICER: Mr. Schmidt, please state your full and complete name for the record?

THE WITNESS: James Gordon Schmidt.

DIRECT EXAMINATION

Q (By Mr. Gordon) Mr. Schmidt, are you employed by

KWY and in what capacity and for how long?

A. I'm employed with KWY Westhinghouse Broadcasting since November, 1961, when the station was in Cleveland; I have since then been producer/director.

Q. Would you describe to the Hearing Officer the kinds of programs that you direct and basically what you do?

A. At the present time I'm associated with one program which is called Seven Days, and ninety percent of that is film. Once a week we go into the studio and put the film, the studio presentation as well as the commercial breaks into a one half hour presentation.

Q. Will you describe how you do that?

A. During the week -- and, our normal taping day is on Friday, Friday afternoons -- Monday through Thursday we are assembling the film pieces that have already been shot; and we put them into a sequence; the film is edited and is now in the form of what we call an A and B Reel; there is picture and sound on two different rolls of film, sometimes three different rolls of film with video and audio changes which occur at specific times throughout the program. It is my function in the control room to put the three rolls together onto video tape so that we have a composite picture of each segment; most of the times these segments are self-contained; there

is no studio involved in it.

Q Do you work from an outline or a script?

A Usually it's from an outline.

Q Would you describe it and what it is and who prepares it?

A The outline is prepared by the talent of the program who is also the producer; this outline is made up by him; he takes the film crew out into the field and shoots the specific stories and leaves with me after this has been shot a word-by-word description of what his narration and part was involved in it, as well as an outline as to what he feels the outcome or the parts of this specific film that should be used.

Q Who determines what film will be shot?

A The producer of the program who is also the talent.

Q And, who determines what will go on the air?

A The producer.

Q Who edits the film?

A During the week we are assembling film pieces.

Q Who are we?

A A film editor, a member of 804, who physically cuts the film frame by frame as well as the physical splicing together or assembling of all the pieces that have been previously cut.

Q And, what do you do while he's physically cutting

the film?

A I am in the room to coordinate the piece, to doublecheck the timing, to make sure that it is not too long, that there's nothing in there that would be objectionable to anyone, that the particular scenes that he has chosen are good scenes, that from an artistic point of view that they are up to quality, generally oversee the entire operation.

Q Now when you say coordinate, do you coordinate using your own judgement, or do you coordinate using the outline that the producer has prepared?

A I coordinate generally by his outline as to following his outline.

Q And, you use some artistic judgement as to whether or not a piece of film looks good?

A Of course, because he has not seen the finished film after it has been developed; the editor and I are the only ones that have seen that since then; and something that he feels was a good point wasn't recorded or something happened to the equipment and it did not come across; and at that point we'd have to make a substitution.

Q Who is your immediate supervisor?

A My immediate supervisor would be Ron Little who schedules my week's activities.

Q Now the nature of your job being -- what most of it is editing or supervising or coordinating the editing. Can you pretty much set your own working hours within some general framework set by Mr. Little, or do you work...?

A Generally the weekly schedule put out by Mr. Little would have me only assigned to those things other than the actual studio assembling of this program which occurs on Friday; the rest of the week, my name would not be on the schedule at all. It is my assumption, and since the amount of preparation time for this show is greater than what it is in a live studio presentation, that I spend the rest of my time or any free time that I have over and above the scheduled times in film editing.

MR. GORDON: O.K. Will the Company stipulate that Mr. Schmidt doesn't have the authority to hire or fire or discipline or lay them off or recall them or promote them or reward them?

MR. BRODERICK: Let me talk to my people for a moment, and I'll let you know.

MR. GORDON: Well, forget it; I'll ask him.

Q (By Mr. Gordon) Do you have the authority or have you ever hired anyone or fired anyone or suspended anyone or laid off anyone, transferred or recalled anyone?

A No, sir.

Q Have you ever done or have you the authority to promote, reward, discipline or adjust grievances?

A No, sir.

Q Have you ever been told that you have the authority to do these things?

A No.

Q And, have you ever recommended that any of these things be done?

A No.

Q Do you consider yourself a supervisor?

A No.

Q Do other employees act as if they consider you a supervisor; do they call you when they're going to be sick?

A No.

Q If the editor you work with is sick, does he call you to tell you that?

A No.

Q If the editor you're working with during the day, will he ask your permission to go home?

A No.

Q You're the highest paid, to your knowledge, director?

A Yes, sir.

Q And, what approximately?

A $16,800.00, I believe.

Q Do you ever attend meetings with Mr. Little and Mr. Salzman and Mr. Beddow at which company personnel policy or labor relations policy or programming policy is discussed?

A No, sir.

Q Do you play any part in determining the fall schedule or the general direction that KWY-TV is going to go as a public broadcasting company?

A No, sir.

Q Do you have any authority to grant leaves of absence?

A No.

Q Can you require technicians to work overtime?

A No.

Q Do you keep time records or work records or production records on other employees?

A No.

Q Do you have the authority to make changes in your work assignment?

A No.

Q Is there anyone who checks the quality of your work or are you responsible for it yourself?

A Well, I would like to think that somebody checks

me every once in a while.

Q Can you give yourself a raise if you want?

A No.

Q Do you play any part in determining the budge for your program?

A No.

Q Are you responsible for the safety of employees?

A No.

Q Do you routinely keep records of employee performance?

A No.

Q Are you required to prepare departmental reports or reports as to your job?

A No.

Q Do you periodically or continuously review and examine and check the quality and quantity of other people's work?

A No.

Q Do you make progress reports on new employees?

A No.

Q Do you coordinate the entire program?

A The specific program that I'm assigned to?

Q Yes.

A No.

Q Do you decide when, where and with whom you will

work or decide when and where news will be shot?

A No.

Q Do you determine and post work schedules?

A No.

Q Do you ever replace the program manager, the production manager or the general manager when they are out sick?

A No.

Q Do you have authority to charge things to the company or commit or obligate the company financially?

A Not without approval.

Q Have you ever been told that you have any authority to do any of these things?

A No.

Q Do you participate in the formulation of management policies in anyway?

A No.

Q Do you participate in deciding which employees will work or which employees will get overtime?

A No.

Q Do you pick the people with whom you will work?

A No.

Q I'm going to show you an organizational chart which has been prepared by the company and which has been marked for identification as Employer's Exhibit

Number 1. Would you look at it and would you tell the Hearing Officer with regard to the work that you do whether or not that chart is correct?

A As this particular chart has it, under the producer/directors it has talent below; in the specific program that I'm involved with, the talent is the producer of the program; and the producer/director would be under the producer; so that the talent and the producer, the talent and producer/director should be in a juxtaposition.

HEARING OFFICER: Who is the talent?

THE WITNESS: Jack Helsel.

Q (By Mr. Gordon) Do you notice anything else off the bat that's wrong with this?

A Yeah, the fact that the producer/directors are on the same level with the production manager; and since the production manager assigns me on a weekly basis, I would assume that he would be an immediate supervisor.

Q You think he would be your immediate supervisor?

A I would, yes.

Q You mentioned that there's a man, an editor, that works with you and physically cuts the film; do you suppose that's the editor referred to on the chart?

A No, the editors here which come down under

news director and assistant news director and assignment editor, the understanding there is that that editor is the editor who edits a specific news program as far as content is concerned, or I think as we've been referring to, as news producer. The particular editor that I work with is an 804 member who is the physical film cutter who cuts things physically, the film.

Q Is he shown on this chart?

A No.

HEARING OFFICER: When you say 804, do you mean Local 804?

THE WITNESS: Yes, Local 804 of I.A.T.S.E.

Q (By Mr. Gordon) Now if I were to ask you to point your finger at the news editor on this chart, who would you think I was referring to?

A To the news editor here.

Q Let the record show he's pointing to the box marked "editors," which is in a flow line from news director.

A Yes.

MR. GORDON: I think that's all from this witness at this point.

HEARING OFFICER: Mr. Broderick?

MR. BRODERICK: Yes.

CROSS EXAMINATION

Q (By Mr. Broderick) Mr. Schmidt, now you have been with KWY since 1961; is that right?

A Yes, sir.

Q Have you been a producer/director all that time?

A Yes, sir.

Q I think KWY moved back to Philadelphia around 1965?

A That's correct.

Q And, since that point in time you've been a producer/director?

A Yes, sir, with the exception of a two-month period; I believe they left Cleveland in July, or I'm sorry, in June; and I came here in August; so there was a two-month period in between there of which there was no service.

Q Now since you've been at KWY, Mr. Schmidt, in Philadelphia for the last six or seven or eight years, have you ever been told that you are considered part of the management group?

A Yes.

Q On more than one occasion?

A I couldn't really give you a number; I suppose so, yes, more than once.

Q Have you been told what KWY expected from you as

part of the management group?

A Expected from me in what terms; as to the fulfillment of my job?

Q Fulfillment of your job, yes?

A To be a producer/director. I don't know; the term producer/director to me means that I'm going to be assigned to a television program for which I will perform a function, and the functions are different from one program to another such as in news where you are a director as opposed to our specific program where you are supervising strictly film editing.

Q Are you supervising the film editor?

A Yes, sir; yes, sir, from the standpoint of content and specific material that will go into that film that we're working on, going by the format or outline that's already been supplied to me.

Q Are you spervising anybody else on the Seven Days program?

MR. GORDON: I'm going to have to object at this point to the term "supervising." He can describe specific things that he does; he has described specific things that he does with regard to the people that he works with.

MR. BRODERICK: Well, Mr. Schmidt used the word and also explained what he meant by it, by supervising

the film editor just a moment ago.

HEARING OFFICER: I'm going to allow that question. Overruled. Answer the question.

A Would you restate it, please.

MR. BRODERICK: If I can remember it.

Q (By Mr. Broderick) I think the question was are you supervising persons other than the film editor?

A No, sir.

Q What about when the show is on the air?

A When the show is on the air, as I mentioned before, generally it is ninety percent film; when we go into the control room to put this program in its final form, if the program is short of its allotted time, a half hour program, there will be some studio presentation needed. If there is studio presentation needed, there will be a sutdio crew similar to doing a news cast or anything else; there will be cameramen, stage managers and prop men. If there is no studio, there are still other technical people who are needed in order to put this thing in its final form; there are video tape operators, a video man who rides control over the film chains so that the proper levels are set on those, an audio man, and a projectionist; so that the number of people involved in the crew depends on what is needed to fill out the program.

Q Who's responsible for directing that crew?
A I am.
Q Incidentally at the start, I think I asked you about, you did testify that you had been told on more than one occasion that KWY considered you management. Did you ever take exception to that?
A Not to my knowledge, no.
Q You told us about the Seven Days program?
A Yes, sir.
Q Now what else do you do?
A On a regular basis, that's t' only program.
Q Well, since 1965?
A Right.
Q Have you not on a number of occasions been assigned other work?
A Oh, yes, sir.
Q Could you give us some examples?
A I can't remember the exact date or the year that I started, but I was at that time the producer of the Contact program with Tom Schneider which was on in the mornings from 9:00 till 10:00 live each day; I did that for about three years, and then the program ended. I have done some news casts at times when people have gotten sick and unable to be there or on vacations; I don't think there's anything in the station that I

haven't done -- from public affairs programs to the sign-on prayer to the national athem.

Q Well, let's take a public affairs program?

A Right.

Q And, have you operated as a producer of a public affairs program?

A Let's see, a public affairs program that I've been on as a producer; I would have to go back to like the Sunday program. There was a program on just this past weekend, I don't know whether it was categorized as public affairs or as news; I really don't know, but I was involved in that.

Q Now what was that program?

A It was a follow up half hour program to an hour documentary that was done by the Urban American Documentary Unit out of New York called "Freedom and Justice: The Uncertain Balance."

Q Were you the producer of that program?

A Of the half hour program locally.

Q You were the producer?

A I would assume myself to be the producer of that program since Mr. Beddow came to me and said we want to do a half hour follow up to this program. At that point I looked at the hour documentary; I sat down also with the news director as well as our editorial director.

In not being too well versed on some of the snooping and wiretapping and all the things that Watergate has brought out and so forth, I consulted with Phil Pine, our editorial director, and the news director for suggestions for possible people who would make up a panel for a studio presentation. We compiled, the three of us compiled a list of about seven or eight, I believe, people who we thought would be good for this. I then presented the proposed panel to Mr. Beddow who O.K.'d it. I proceeded from there to make the phone calls and contact the people and ask them if they would participate in this program. The time was assigned; the talent was assigned; and I lined up the guests, the studio people.

Q Now who was the talent?

A Jack Helsel again.

Q And, you say that you lined up the guests?

A Yes sir, I called them.

Q Now take us from there; what happened?

A Really I called them on the phone and gave them our taping times, a time at which they could view the video tape or the hour documentary, the format was pretty much you know studio talk; there was a suggestion by Mr. Beddow too, since this program was running a day behind the documentary to do a little rehash, for which

I went and edited some short sections out of the hour documentary.

Q Who developed the outline for the program?

A Well, as to what it was going to involve, I don't really know that a format was, for that particular kind of show a format is pretty standard; it's six people sitting in the studio talking for a half an hour.

Q What about any questions that were to be asked?

A No, I submitted no questions to the talent; the talent and I discussed and he also saw the documentary prior to going into the studio to tape. At this particular viewing, all the members of the panel were there; and the six of them in a pre-program discussion kind of determined what they were going to talk about in advance weaning out some of the minor details.

Q Did you participate in that discussion?

A I was in the discussion, yes, sir.

Q Did you participate in it?

A Yes, it was a luncheon; we were having sandwiches at the same time.

Q Go ahead.

A That's about it. At that particular point we went down into the studio; we rolled tape; and twenty-eight minutes and forty-five seconds later the show ended.

Q How many technicians were necessary to tape the show?

A Let's see; you have three cameramen, a stage manager and a prop man; that's five; you have a video man, a projectionist, a tape operator, an audio man; nine; nine, including myself.

Q All right, what function were you performing while this was being taped?

A I was the director.

Q And, you were directing eight or nine individuals?

A That's correct, I was in the control room operating the console, the switcher as we have determined is the terminology. I like to see the term "producer/director" as a producer who involves ninety percent of his time or maybe even ninety-five percent of his time in pre-program set up and decision making and the other ten percent is the director, which is basically what it is; in other words you're performing a dual function; and when you become a director, then you're in the studio. And, it's difficult to be a producer and a director at the same time and keep all the buttons straight.

Q How often would you say, Mr. Schmidt, that you perform work in areas other than the Seven Days program; take a month?

A Take a month. I think other than the show that was on last Sunday, I would have to probably go back to two months, maybe three months; I can't even remember the program one step back from other than the Seven Days.

MR. BRODERICK: No other questions.

HEARING OFFICER: One question; I see that Mr. Gordon has some other questions. When you took part in this more recent program, the half hour presentation of panelists and so forth, who operated the switcher?

THE WITNESS: I did.

HEARING OFFICER: I see. Go ahead, Mr. Gordon.

REDIRECT EXAMINATION

Q (By Mr Gordon) Mr. Schmidt, when you work with the Local 804 film editor, other than the artistic judgements that you make as to whether a piece of film is of good quality or whether the audio is good, you pretty much or entirely are following the producer's outline?

A Yes, sir.

Q And, if you tell the Local 804 film editor to do something, I don't know what kind of directions you give him, but maybe to clip off a half a minute of this film?

A Yes.

Q That's following the directions, plus using your artistic judgement?

A That's right.

Q Do you have any kind of authority or could you hire a different film editor; could you ask for a different film editor to be assigned to you?

A I couldn't hire a different one, no, sir.

Q Could you on your own change the film editors so that you work with a different one?

A No, no.

Q Could you fire the film editor that you work with?

A No.

Q Could you change his assignment completely?

A By assignment do you mean an assignment other than the Seven Days program.

Q Yes.

A No.

Q Do you make routine reports about his competence?

A No.

Q Do you decide if he'll work overtime or he'll be the particular editor who works?

A I could assign him overtime if the program was not going to meet the deadline, but other than that that overtime has to be cleared by the supervisor.

Q Who is that?

A Ron Little. Or, I could even go to the producer, Jack Helsel for authorization.

MR. GORDON: I have no further questions.

RECROSS EXAMINATION

Q (By Mr. Broderick) Mr. Schmidt, when you're back with the local 804 film editor?

A Yes, sir.

Q What's his outline?

A When the talent is out in the field and shoots the particular piece that they are going out there to cover, he does what we call as a self-contained package: there's a beginning, there's a middle and there's an end. He will script his beginning, his middle and his end and leave that for me with spaces in between for comments or on camera interviews or whatever the specific story is about slotted in certain places and his narration as far as the middle is concerned and then there is an ending; and each one of these pieces is a self-contained package.

Q There's a start, a middle and an ending; all right.

A Yes.

Q Now what do you do within those parameters?

A O.K. I have the script; we sit down, the editor and I, and preview all of the finished film that was shot on that specific story; obviously there's a lot of

junk there; there are takes that he fluffed a word on, so he goes back and does it again; we weed out all the things that obviously we know are not going to be of any value. I have the script of what he says for the beginning, for the middle and what he says for the end; we then mark those and lift those out of the main package of film that we have and hang them up for future reference; and we continue along lifting our specific interviews, making a rough cut or saying this specific section is of importance and relates to his question that he asked earlier; and then we will hang that up and then assemble it all in a rough cut version. Then we'll go back and trim out any redundancies, anything that perhaps he refers to that we can't show visually, that they never shot film for. So, we then bring it down into a sizable package at a certain time.

Q Where is the producer when this is being done?

A He's probably out in the field shooting another piece; that's basically the way it goes; he is with the film crew five days a week and is shooting and we're back in the station editing.

Q When you finish then with that segment, that's then the final product; is that right?

A Yes, sir.

MR. BRODERICK: All right. No other questions.

REDIRECT EXAMINATION

Q (By Mr. Gordon) You were talking about there being a beginning, a middle and an end. Do you determine what the beginning, middle and end is?

A No.

Q Who does?

A The talent, Jack Helsel; he scripts it in the field usually after he has talked to the people and basically the whole thing is complete.

Q Now you say you cut out the junk. How do you know it's junk?

A If he's talking along and he says that I talked to Mr. Broderick and he mispronounces his name; he will just stop and say, let's do that again; and he continues on.

Q You don't mean you think it is junk because you didn't particularly like it?

A No, no, because he blew a word or they run out of film or they had to reload for some reason or another; and then he would pick up and repeat that particular part again. But, usually he would put a slate on the head which would say narration, whatever the piece is titled.

MR. GORDON: I have no further questions.

HEARING OFFICER: I have a couple of questions.

EXAMINATION

Q (By Hearing Officer) I'm now speaking of the Seven Days program of which you take part. The talent is out in the field filming various episodes and a great deal of film is actually used?

A That's correct, yes.

Q You're back at the studio and you edit the film and you talk it over and you eliminate film which is not usable in your judgement?

A Yes, that's correct.

Q Do you at anytime use any independent judgement to determine which of several takes to use; I mean you have two or three takes perhaps that look all right, there's nothing objectionable with them. Do you then decide which of the three is the best?

A It's usually a rule of thumb on retakes, the only time a retake is done is on the talent's portion of the film -- his beginning, middle and end as we call it; and if for some reason a take comes out that I found nothing wrong with, the first one, and there's no explanation left for me, it's an automatic thing to take the last one; otherwise why redo it if the one prior to that was O.K.; so I don't know, it's an understanding.

Q Have you ever had an occasion when talent has come

to you and said on that last show that was aired you should have used another take instead of the one?

A. Constantly.

Q. He remonstrates?

A. Yes, he has his...

Q. Who has the authority to decide which take should be used?

A. Who has the authority?

Q. Right, you're back at the studio examining the film and you decide a certain thing should go in; if he comes to you later and complains about it, do you correct what you've done improperly, or do you take his suggestion as to what film to use?

A. On a specific take he does only the amount of takes that are necessary to get what he feels is the proper reading the way that he wants it to go; and I would have really only one alternative; it would be to take the last one that he did that's there.

Q. You mentioned in your testimony several minutes ago that talent has come to you and said or complained about certain things?

A. Yes, sir.

Q. What were the complaints?

A. Why didn't we use a particular, one particular sequence of shots that showed Mr. Broderick while I was

talking to him; and I would explain to him that that particular piece of film was light struck or it was over exposed or it was under exposed and we couldn't use it.

Q Technically?

A Technically we could not use it. Normally the outline is so set up and so specific that it's very difficult not to for some technical reasons to have that happen.

Q Does talent tell you from time to time just what to look for?

A Yes, on his outline he might leave me specific notes to watch out for...

Q And, if you fail to follow those outlines, what does he do?

A He would let us know; but usually by that time since we're working on a week-to-week basis, in other words we edit for four days and it goes onto the tape Friday and airs Sunday, he may not see it in total until it goes on the air Sunday or we are in the studio taping on Friday; and by that time it's really too late. So, he leaves it pretty much up to me. We haven't had any knock down and drag out, you know arguments over it.

Q Does talent have a specific policy that he likes to have carried out from week to week?

A No, not really; it's a very unstructured kind of thing I think as far as philosophy is concerned from his standpoint. If he feels that something should be treated a specific way, he'll make a notation at the bottom of the outline informing me; because he may shoot it today and I may not get to editing it for maybe three weeks, and he might have forgotten about it or forget to tell me; so he'll make a notation at the bottom of the script.

Q But, in any event you do follow the outline?

A Yes.

Q If you chose not to follow the outline and decided on a more brilliant way to do it and a more creative way, what would you do; could you do anything?

A Yes, I would go to him and say, this particular part didn't work; we should you know redo a segment or do you want to drop it or shorten it or what and explain to him the difficulties or something specific that I might have in mind; and he would either approve it or deny it.

Q I see. But, you don't do it unilaterally?

A No.

HEARING OFFICER: I have no other questions of the witness.

MR. GORDON: Neither do I.

MR. BRODERICK: Yes, just to clarify the record.

RECROSS EXAMINATION

Q (By Mr. Broderick) Now we've been talking about Seven Days.

A Seven Days.

Q It's shown once a week?

A That's correct.

Q On Sunday?

A On Sunday from 6:30 to 7:00.

Q And, so called talent is taping generally four days a week; is that right, or filming four days a week?

A Yes, roughly; he pretty much sets his own, he sets up the specific assignments as well as the film crew and he's you know in charge of the film crew as well. Now not all the time is he out four days a week; he may be out two days a week one week and the next week, five days.

MR. BRODERICK: That's all.

MR. GORDON: No questions.

HEARING OFFICER: Thank you very much.

(witness excused)

MR. GORDON: Give me five minutes.

HEARING OFFICER: All right. We'll take a five minute recess.

(A five minute recess was taken)

HEARING OFFICER: On the record.

MR. GORDON: I call as my next witness John Smith.

Whereupon,

JOHN VINCENT SMITH, JR.

was called as a witness by and on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows:

HEARING OFFICER: Please state your full and complete name for the record?

THE WITNESS: John Vincent Smith, Jr.

DIRECT EXAMINATION

Q (By Mr. Gordon) Mr. Smith, are you employed by KWY Television and as what?

A Yes, I am, as a producer/director.

Q How long have you been so employed?

A I've been with KWY since they came to Philadelphia in 1965; I was with Channel 3, NBC, from 1963.

Q What kind of programs do you direct?

A I direct two news programs five days a week and also the Sunday shot.

Q What is the Sunday show?

A The Sunday show is a half hour public affairs religious program.

Q Well, we'll return to that in a minute. Who is your supervisor?

A Ron Little.

Q On the news programs that you direct, who determines what goes on the air?

A The producer.

Q Do you follow the script prepared by the producer?

A Yes, I do.

Q And, you, I assume, sit in the control room while the show is on the air and do your own switching?

A That's correct.

Q And, pass along the producer's instructions through the inter-communication system to the stage manager?

A That's right, yes.

Q Have you the authority or have you ever hired or fired, suspended, transferred, laid off, recalled, promoted, rewarded or disciplined anyone or adjusted grievances?

A No.

Q Have you ever been told that you have that authority or have you ever recommended any of those things?

A No, I have not.

Q Do you consider yourself a supervisor?

A No, I don't.

Q Do people come to you when they have grievances?

A No, they don't.

Q Do people come to you when they're going to be out sick or ask your persmission?

A No.

Q Does anyone ever call you boss?

A No.

Q If an employee wants to leave early, does he ask for your permission?

A No.

Q How much do you earn?

A About $14,100.00.

Q Do you ever play any role whatsoever in the planning or carrying out of KWY's labor relations policy or its manpower policy or its fall programming policies?

A No.

Q Do you keep time records or work records or production records on other employees?

A No.

Q Do you have the authority to assign other employees to work overtime?

A No.

Q Can you grant leaves of absence?

A No.

Q Do you inspect, report, record or reevaluate the work of other employees?

A No.

Q Do you set your own working hours?

A No.

Q Do other employees report to you for guidance?

A No.

Q Are you responsible for the safety of employees?

A No.

Q Do you keep records of employee performance?

A No.

Q Do you keep records of departmental performance?

A No.

Q Do you continuously examine, check or review the quality and quantity of other employees' work?

A No.

Q Do you submit reports on the competency of other employees?

A No.

Q Do you set your own hours?

A No.

Q Do you decide with whom you will work with?

A No.

Q Do you schedule and post assignments or work

schedules?

A No.

Q Do you play any role in formulating personnel policies with regard to employee morale?

A No.

Q Do you replace the program manager, the production manager, or the general manager when they are out sick?

A No.

Q Do you have the authority to charge things to the company or commit the company financially?

A Not unless previously authorized.

Q Have you ever been told that you have the authority to do any of these things?

A No.

Q Do you participate in the formulation of management policies?

A No.

Q Do you participate in deciding which technicians will work overtime?

A No.

Q Do you specify the number of employees that will be used on a given job?

A No.

Q Do you pick your own cameraman or light man or audio man or technician with whom you wish to work?

A No.

Q Does your evaluation of the capabilities of other employees play any part whatsoever in determining whether or not they will be assigned to work with you?

A I don't recall ever really having given an evaluation of anyone.

Q Now you also direct a half hour religious program?

A That's correct.

Q Do you also serve as a producer on that program?

A I am nominally the producer.

Q Do you determine the budget of the program?

A No.

Q What is the name of the program?

A Sunday.

Q Sunday?

A Yes.

Q Did you pick the name?

A No.

Q Did you pick the format?

A No.

Q Was this all given to you as a package when you came on the show?

A That's correct.

Q You do play some role in determining what guests will be on the show?

A That's correct.

Q How much of a role and what determination do you have?

A Generally I make phone calls if necessary; maybe fifty percent of the time the people call me; or I write letters or news releases; and I book as I can, whomever I can.

Q Who is your immediate supervisor?

A Ron Little.

Q If Mr. Little says I don't want so and so as a guest, who has the final authority in that area?

A Well, I don't know that Ron Little would say he didn't want so and so as a guest; I think probably Mr. Beddow would be more to say something like that.

Q If Mr. Beddow says I don't want so and so as a guest, can you have that person as a guest anyway?

A I wouldn't.

Q Do you have complete and over-all responsibility for the Sunday show; do you determine what goes out over the air?

A For the most part, but there are times when I have gone to Mr. Beddow for a decision, rather than to make the decision myself.

Q Do you meet with the management of the company to plan the general course that this program is going to

take or see what needs it will fulfill for the public?

A I have spoken, not a meeting as such, I have spoken with Mr. Beddow about the program from time to time.

Q Certainly; you would have to. But, I mean do you attend meetings with Mr. Beddow, Mr. Salzman and Mr. Little?

A No.

Q Who picked the talent on the program, or is the talent the guest?

A No, there is a host; at the moment it is Bob Bradley; I don't know who picked him.

Q Did you?

A No.

Q If you wanted a different host, could you have one?

A No, not without consulting with someone higher.

Q I mean you couldn't say, Mr. Bradley, you're fired or you're transferred or go do something else; I want Joe Blow to be the host?

A Well, there were two co-hosts; and one of them was dropped, but not by me.

Q By who?

A It came from the programming office.

Q At your request?

A No.

Q Do you determine, you don't determine the budget for the program?

A No.

Q Suppose the program needed to be expanded to an hour; would that be your decision?

A I would have to ask someone if I could expand it to an hour.

Q Have you ever done that?

A No.

Q Do you determine what time of day the program is going to be broadcast?

A No, the time has changed recently because of network preemptions, and rather than have many network preemptions the time was moved, the time of the program.

Q Was that at your request?

A Well, I complained about the preemptions; the time change, I suppose, indirectly I had something to do with it; but I did not request the time change.

Q Do you make reports to anyone as to whether or not the cameramen or the light men or the audio man is competent to do his job?

A No.

Q I show you now what's been marked Employer's Exhibit Number 1 for identification purposes; it's the

organizational chart prepared by the company. Would you look at it and tell the Hearing Officer if there is anything on there that doesn't appear to you to be correct?

A Well, once again as I believe Mr. Schmidt said the production manager is on a level with the producer/directors; but in reality he is above the producer/directors.

Q In fact, you testified he is your immediate supervisor?

A That's right, he does our scheduling. As far as the news editors are concerned, we work under them in the news program; so we should be somewhere under the news editors also.

MR GORDON: I have no further questions.

HEARING OFFICER: Mr. Broderick.

CROSS EXAMINATION

Q (By Mr. Broderick) Mr. Smith, you referred to Ron Little as your immediate supervisor; and as I understand your testimony you get there because he schedules you and that's why you conclude that he's your immediate supervisor?

A Well, yes, he does schedule us; and if we have problems with scheduling or something, regarding our scheduling, we go to him.

Q So to the extent that it's a scheduling problem and by that I take it we mean the hours that you are going to work in a particular week or where you are going to be assigned; is that right?

A That's correct.

Q Or, is it just the hours?

A No, he assigns hours and duties; he puts the schedule out.

Q If you have a problem with that, you go to Mr. Little, is that correct?

A That's right.

Q Now with respect to the Sunday program that you produce, if you have a problem with that you go to Mr. Beddow; don't you?

A I go to Mr. Little for scheduling and possibly physical production problems; I would go to Mr. Beddow for program content problems.

Q And, I think as you testified, you have the over-all responsibility for the content of the Sunday program?

A I would not say the over-all responsibility because there have been occasions that I have gone to Mr. Beddow to ask his opinion about having certain persons on the program.

Q But, you do initiate these discussions with

Mr. Beddow?

A Yes.

Q And, you go to him with what you feel would be an appropriate format or content for the program; is that right?

A I go to him with the name of the proposed guest and ask if he thinks this would be good to have on the show.

Q I take it that in most cases he agrees with you?

A With reservations; he has instructed that if I have just one on, I should have someone else on to balance out the original guest.

Q You said Bob Bradley is the host?

A That's right.

Q Have you had occasion to go to Mr. Bradley and suggest that they bring in another host?

A No, I have not.

Q If you were dissatisfied with the host, would you make that suggestion or recommendation?

A I don't know that I would have need to, but I suppose I would.

Q How long have you been a producer/director?

A I'm not sure exactly because I was a correlator originally in the master control room; and at some time after 1965 I became director of the 11:00 o'clock news

along with correlating duties during the day; and once again I don't remember the exact date, but somewhere along the line it evolved that I was no longer a correlator, and I then became a full-time director. I couldn't pin it down to an exact date.

Q Now since you've been a producer/director, have you been told by people at KWY that you are considered part of the management group?

A I have been told that.

Q On more than one occasion?

A I would think so.

Q Have you ever objected to being designated as part of the management group?

A I have wondered about it in my own mind; I have never said anything.

Q You never said anything to anyone at KWY?

A No.

Q Or, any superiors of yours?

A No.

MR. BRODERICK: I have no other questions.

MR. GORDON: I have some.

REDIRECT EXAMINATION

Q (By Mr. Gordon) In this chart, referring to that chart, when you are doing the news, the 6:00 o'clock news -- the 5:00 o'clock news?

A The 5:30.

Q The person who prepares the script and tells you what cues to give and what film to use is the producer, right?

A Yes.

Q Where is the producer on that chart?

A He's underneath the news director, listed at the bottom as "editor."

Q The person who is the editor is the producer on the news program?

A Well, what's called editor on this sheet is called a producer.

Q Did you determine that the Sunday show be called Sunday and that it would be a religious program?

A No.

MR. GORDON: I have no further questions.

HEARING OFFICER: Mr. Broderick?

MR. BRODERICK: I have no questions.

HEARING OFFICER: I have no questions. The witness may be excused.

(witness excused)

MR. GORDON: As my next witness I would like to call James Herring.

Whereupon,

JAMES BERNARD HERRING

was called as a witness by and on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows:

HEARING OFFICER: Give your full name for the record?

THE WITNESS: James Bernard Herring.

DIRECT EXAMINATION

Q (By Mr. Gordon) Mr. Herring, do you work for KWY TV?

A Yes, I do.

Q What do you do there?

A I'm a producer/director.

Q For how long have you been?

A I started August 28, 1972.

Q And, what is your current salary?

A $10,500.00.

Q What kind of programs do you direct?

A It varies. I direct the weekend news, 6:00 and 11:00 on Saturday and Sunday; I direct Melting Pot; I direct Challenge; I'm a technical director for Speak for Yourself; I direct Farm, Home & Garden; I directed a series, Making of a Priest.

Q Excuse me; you directed all of these programs; and on which of these programs did you also have some producer responsibilities?

A I was a producer on Melting Pot.

Q So, you were the director on all and the producer on Melting Pot?

A Melting Pot.

Q What did you do on the program on which you are technical director?

A On that program I make sure that the facilities are available; I speak to the director and producer in New York and act as a coordinator between him and his staff and the station.

Q In that case is the director your immediate superior?

A He is my superior in that program.

Q And, do you also do the switching?

A I also do the switching, yes.

Q And, for the rest of the programs, who is your immediate supervisor?

A Ron Little.

Q He's production manager?

A He's production manager.

Q On the weekend news who is the producer?

A It varies from show to show; usually Kathy Papino produces the 6:00 on Saturday and Sunday; and Carl Ward produces the 11:00 Saturday and Sunday.

Q And, the producer prepares the script and tells

you when to cue?

A Yes.

Q Would you say that the producer has the over-all responsibility in the news program?

A The producer has the over-all responsibility of the program.

Q Now on the Melting Pot program, you also have the responsibility on that program of being the producer/director?

A Yes.

Q Did you pick the name of the program or the content of the program or the format of the program or the time or the budget?

A No, I did not.

Q Well, then what are your responsibilities with regard to Melting Pot?

A Lining up guests.

Q How do you line up the guests?

A I uses various sources -- either letters, newspaper articles, or different topics that are submitted by my host; and with that information I will make phone calls and determine topics and guests.

A Who is your host?

A Gary Gears; he's a staff announcer.

Q Who picked him?

A That was picked by the program manager.

Q Generally speaking or specifically speaking, do you have -- or, who makes up your work schedule; do you know?

A Ron Little.

Q Who evaluates your performance as a director?

A I presume Ron Little.

Q You can't give yourself a raise or schedule yourself different times?

A No.

Q Do you have the authority to hire, fire, or suspend or recall or transfer, promote, reward, discipline or adjust grievances?

A No.

Q Have you recommended any of those things?

A No.

Q Has anyone ever told you that you have the authority to do that?

A No.

Q Do you consider yourself a supervisor?

A No.

Q Do other employees come to you or tell you when they're going to be out sick or when they want to leave early?

A No.

Q On Melting Pot?

A No.

Q Do you attend meetings with supervisory personnel or play a role in the planning of the future of KWY-TV?

A No.

Q Do you play a part in planning KWY-TV's labor relations policy or personnel policy?

A No.

Q Do you have authority to grant leaves of absence or to assign overtime or to have technicians work on their day off?

A No.

Q Do you keep time records or work records or production records on other employees?

A No.

Q Can you schedule changes in your own assignment or your own working hours?

A No, I can't schedule them myself.

Q Do you inspect, record, report or evaluate the work of other employees?

A No.

Q Are you responsible for the safety of emphyees or for keeping records of their performance or of the department performance?

A No.

Q Do you periodically or continuously examine, check or review the quality or quantity of employees work?

A No.

Q Or, the work of beginners or learners?

A No.

Q Do you determine who will work or which employees will work overtime or which employees will work on their day off?

A No.

Q Do you ever charge things to the company?

A Not without prior approval.

Q Do you determine the budget for Melting Pot?

A No.

Q Do you participate in the formulation of management policies?

A No.

Q Do you participate in deciding which employees will work or which employees will work overtime?

A No.

Q Can you pick your own cameraman, light man, audio man, technicians, and film editor?

A I have at times asked to have a particular light man, but it hasn't necessarily been heeded.

Q Has it ever been?

A No.

Q Mr. Herring, you don't post work schedules or check time sheets, do you?

A No.

Q You don't assign work load changes?

A No.

Q Do you assign news to reporters?

A No.

Q Do you oversee the work of film processors?

A No.

Q Do you determine the time for each news segment?

A No.

Q Do you secure replacements for employees who are out sick?

A No.

Q Do you prepare critiques or evaluations of the previous day's programming?

A No.

Q Do you have the authority to requisition employees at KWY if you need a few employees to do something; do you have the authority to get them -- the cameramen and technicians?

A No.

Q Or, in the middle of a program to reassign people to do other things?

A No.

Q Would you say that you have complete control over station KWY at anytime?

A No.

MR. GORDON: I have no further questions.

HEARING OFFICER: Mr. Broderick?

CROSS EXAMINATION

Q (By Mr. Broderick) The Speak for Yourself program?

A Yes.

Q That goes once a week?

A No, we do that, we tape that every other weekend as a rule, both Saturday and Sunday sessions.

Q And, what's the nature of the program?

A It is an educational type of program done in conjunction with the Ed Technology Department at Hunter College.

Q Who is the producer of the program?

A Dick Bryer.

Q Is he employed by Westinghouse?

A No.

Q Who is he employed by?

A Hunter College, I believe.

Q Who then is the director of the program?

A Dick Bryer.

Q He's both producer and director?
A Yes.
Q And, he's a Hunter College employee?
A I believe so.
Q And, you're the technical director?
A Yes.
Q To that extent you are the Westinghouse representative for this program; is that right?
A I would imagine so, yes.
Q And, would you agree that as the Westhinghouse representative, you have the responsibility to exercise judgement and discretion as to what goes out over the air on that program?
A The program isn't aired yet; so I wouldn't make the final decision; the program has not been aired and probably will not be aired for sometime.
Q How many segments have been taped?
A I think now we've completed nine shows.
Q And, have you been the technical director for those?
A For all nine, yes.
Q And, what discussion or judgement did you exercise in determining what could go onto to the tape?
A In what way do you mean in discussion; obviously if something is totally unairable, I would let it be

known to the director; but so far such a thing hasn't arisen.

Q But, if it did you would make it known...?

A I would make it known to him you know that maybe you shouldn't try that; you know I would make the suggestion to him.

Q And, although the director is a Hunter College empbyee, do you think he could overrule you?

A I really don't know; if something came up that he decided that he was going to have taped and I felt it shouldn't be taped and it came to a point of confrontation, I would notify my superiors immediately.

Q Who would you notify?

A I'd notify Dave Beddow.

Q Dave Beddow?

A Yes.

Q That situation has not arisen yet?

A No. I don't anticipate it would.

Q What other relationship, if that's the appropriate word, do you have as to the content of this program?

A That's about it; I do not determine the content; I do not decide shots or sets for that particular program; I merely supply to the director any technical things that he would need from the station to see that he can get the shows taped.

Q And, that would include the crew?

A No, not the crew; that would be determined by regular production assignments; but that would include if he needed art carts or if he needed supers or if he needed equipment that the station could supply; if he needed say two video tape machines instead of one, I would request two; if he needed other additional facilities, I would make the request to the proper departments.

Q How long did you say you have been the director on Melting Pot?

A Since I've been with the station, I believe; no, no, we first went on the air October, since October.

Q October of...?

A Of '72.

Q And, you've been a producer/director since when?

A August of '72.

Q If you know, how was it determined that you would be the producer/director of the show?

A I was informed that I was going to be the producer/director for that program.

Q Were you asked whether or not you wanted that assignment?

A I really don't recall, but I'm sure we talked about it, yes; you know this is the show. Well, as I

recall, the way it was handed me is that, here's a show for you; we have a show for you; this is all yours.

Q And, with respect to the show, what guidance if any were you given?

A That it was to be a talk show, replacing a previous show that had been on the air; and the format that the program was to take.

Q Can you be a little more specific?

A O.K. It was determined that the program would be as I say a talk show with a specific host dealing with topics of pertinence and possibly controversy for a half an hour to be aired on Sundays.

Q And, that would be the guidelines under which you were to operate?

A Yes, I can't think of anything that I left out; I might have.

Q On topics of pertinence or conversaal topics?

A Yes.

Q Those were the guidelines of the show?

A Yes.

Q Who determines the topics?

A The topics; I sit down with my host and we go over suggestions and ideas; I submit to both Dave Beddow and Dave Salsman my topic and schedule, the scheduled guest; and then we tape the show.

Q So you are basically responsible for picking the topic and lining up the guests to discuss the topic?

A Basically, yes.

Q Now what about, do you have any formal scripts or questions or things like that that you feed to the guests?

A No, nothing is fed to the guests; it's an off the cuff things; it's meant to be informal, off the cuff. I sit down with the host and determine you know the way we're going to go, you know what areas we really want to treat with these particular people. As far as making up questions, I on occasion will say to Gary, who is the host, you know go into this specific area. As far as feeding the guests questions, I don't.

Q So you and the host, you're discussing and making suggestions to him as to the particular areas he should go into?

A Yes.

Q Or, areas that he should explore in greater depth?

A Yes,or areas that should be covered if the guests sort of stray off so that you know he can bring them back to a specific area. As far as feeding the guests questions, I don't.

Q And, this goes on once a week?

A Once a week.

Q As I understand it, Mr. Herring, you select the guests and the topic; you inform Salzman and Beddow of who the guest will be and what the topic will be; is that right?

A Yes.

Q Is that more as a matter of information than anything else?

A No, it was determined that that's the procedure that I should take.

Q And, what's happened since you've been informing them of the topics and guests; have there been any changes?

A Do you mean have I been told not to have a topic on?

Q Yes.

A No, not really.

Q You have not been?

A Only once I was specifically asked to have a specific topic and a certain guest on. Negative, I haven't.

Q Negatively it has not occurred?

A No.

Q And, you're also the director on the program?

A I'm also the director, yes.

MR. BRODERICK: No further questions.

MR. GORDON: No further questions.

HEARING OFFICER: I have no questions. Thank you.

(witness excused)

HEARING OFFICER: Do you have any other witnesses, Mr. Gordon?

MR. GORDON: I have a problem; let me state it on the record. I have another witness, but she's working and she won't be available until after 4:00 o'clock and we won't be here after 4:00 o'clock. So, I'd like to postpone closing my direct case and if the company has no objection, proceeding with theirs. I have one further witness, and I can't call her now.

HEARING OFFICER: Yes. Do you have any objection to that, Mr. Broderick?

MR. BRODERICK: I take it that's Susan Horowitz?

MR. GORDON: Yes. I mean I'd propose a stipulation but I know you'll never agree to it.

MR. BRODERICK: Since we're on the record, I wish you'd be careful what you say about me.

MR. GORDON: I'm sorry. That was a flippant remark; I didn't know we were on the record.

MR. BRODERICK: I think I do. The reason I say that is that I think it's easier for me to present my

case -- and I know I can do it quickly -- if I can present it in a way that covers not only what I consider to be the affirmative side of our case but also armed with what all of our producer/directors, or least most of them have to say about this thing. I should add that I don't, I wouldn't intend in any event to be able to finish by 3:45; and I do think there's some merit in doing it the next time around because I think it will go faster.

MR. GORDON: Excuse me for a minute; before we go off the record, just give me one minute and perhaps I'll be able to change my request.

HEARING OFFICER: Let's take a five minute recess.

(A five minute recess was taken)

HEARING OFFICER: On the record.

MR. GORDON: Mr. Hearing Officer, I rest.

HEARING OFFICER: Do you intend to call any other witnesses?

MR. GORDON: I have no further witnesses, subject to the right to call witnesses on rebuttal; but I rest.

* * *

PROCEEDINGS

9:30 o'clock, a.m.

HEARING OFFICER GRAHAM: On the record.

This is a continuation of a hearing which opened June 5, 1973, in Case of KWY-TV. I notice in the hearing room the same parties are in appearance for both the Employer and the Petitioner.

As I recall at the conclusion of the hearing on June 5th, the Petitioner had concluded its presentation; is that correct?

MR. GORDON: That is correct.

HEARING OFFICER: Mr. Broderick, are you prepared to proceed with the Employer's case?

MR. BRODERICK: Yes, sir. I just have one question; at the hearing on June 5th, there was reference to the Board's decision in Directors Guild of America finding that the DGA was a labor organization as defined in the Act. I note that decision was rendered in August, 1972; and I was wondering whether or not there had been any appeal to a Court of Appeals in that decision?

MR. GORDON: Yes, I think a petition for review was filed.

MR. BRODERICK: I guess my further question would be is the petition for review challenging the NLRB's

determination that DGA is a labor organization?

MR. GORDON: It is.

HEARING OFFICER: Would you want to take testimony today on the status of DGA as a labor organization?

MR. BRODERICK: Well, it seems to me that we're in somewhat of an unusual posture where DGA has filed this petition presently pending before you and at the same time is challenging the Board's determination that it is a labor organization and if the Court of Appeals would agree with the DGA that it is not a labor organization subject to the Act, this whole proceeding might, this instant proceeding might turn out to be futile. I'm somewhat at a loss as to what we do under the circumstances.

HEARING OFFICER: Well, the Board may well take the position that DGA is a labor organization and appeal the findings of the Circuit Court if it does find that DGA is not a labor organization to the Supreme Court for a determination.

MR. BRODERICK: Well, that's possible too, sure.

HEARING OFFICER: So, therefore, we're really back where we started. If the Board has taken that position -- and, I haven't reviewed the citation suggested by Mr. Gordon -- I believe, I don't want to state the Regional Director's position, but it would seem

to me without prejudicing anyone's position that the Regional Director would take the same position -- that DGA is a labor organization -- and until such time that higher authority, and perhaps the Supreme Court, will rule otherwise. But, I'm open to any route which you wish to take; I'm perfectly willing to take testimony on the status of DGA if they have witnesses available at this time.

MR. BRODERICK: Well, it seems to me that in order to protect the Employer's position in the event the Court of Appeals reverses the Board and then perhaps the Board then quote "acquiesces" unquote in that decision that we ought to have something on this record concerning what DGA considers itself, whether it's a statement by DGA Counsel to the effect that it considers itself a labor organization for the following reasons or just what, I don't know; but there ought to be something on that in this record.

MR. GORDON: All right, briefly let me say for the record -- I don't know if this will satisfy you -- but, we must draw some distinction between the area of motion pictures and television; it is true, as Mr. Broderick has suggested, that the Guild is contesting the Labor Board's determination that it is a labor organization with regard to representing people

employed in motion pictures; it does not contend that it is not a labor organization with regard to people or employees working in the area of television; it represents employees for the purposes of collective bargaining at NBC, ABC and CBS Television Networks; and it is an organization which seeks to represent employees at this station for the purposes of collective bargaining; and as Counsel for the Guild, I state that it is in our opinion a labor organization for these purposes.

MR. BRODERICK: Well, I take it, as a labor organization or a group which admits to membership and does in fact have as members non-supervisory people?

MR. GORDON: Yes.

MR. BRODERICK: And, bargains collectively on behalf of those non-supervisory people?

MR. GORDON: It does.

MR. BRODERICK: And, if I understand your position, you're saying as far as the television industry is concerned, you have no problem with DGA being a labor organization; it is only when we get to the motion picture industry that there's some problem?

MR. GORDON: Yes, I have no problem with their being a labor organization with regard to television. It is.

MR. BRODERICK: I guess that's enough on this record.

HEARING OFFICER: Off the record.

(discussion off the record)

HEARING OFFICER: On the record.

In the off-the-record discussion, I asked Mr. Gordon if he had a witness to call as a representative of the labor organization to describe the organization; and he indicated that he did. Mr Gordon, do you have a witness?

MR. GORDON: Yes, I call Mr. Ernest Ricca.

Whereupon,

ERNEST D. RICCA

was called as a witness by and on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows:

HEARING OFFICER: Would you please state your full name and title for the record?

THE WITNESS: Ernest D. Ricca, Eastern Executive Secretary for the Directors Guild of America.

MR. GORDON: Do you want to ask the questions?

HEARING OFFICER: Yes, I might as well.

EXAMINATION

Q (By Hearing Officer) Would you repeat your official position with the union, sir?

A Eastern Executive Secretary.

Q What is the name of the organization for which you are Eastern Executive Secretary?

A Directors Guild of America, Inc.

Q Is that affiliated with any other labor organization?

A No, it is not.

Q And, are employees permitted to participate in this organization?

A Yes.

Q And, what is the purpose of the organization?

A It's a collective bargaining organization in radio, television and film for directors and their assistants.

Q And, is it the purpose of your organization to deal with with employers concerning hours, wages, and working conditions?

A Yes, it is.

HEARING OFFICER: I have no questions. Mr. Gordon?

MR. GORDON: I have no questions.

HEARING OFFICER: Mr. Broderick?

MR. BRODERICK: Yes.

CROSS EXAMINATION

Q (By Mr. Broderick) Mr. Ricca, just one or two questions. Before you took the stand there was a

statement by your counsel that while the Directors Guild of America considers itself a labor organization as far as the television industry is concerned, it does not consider itself a labor organization as far as the motion picture industry is concerned; is that correct?

A Yes.

Q Could you explain briefly why you draw or why DGA draws that distinction?

A I think mainly because of the categories covered by the film agreement; in the film area, the Guild represents directors, assistant directors or unit production managers; and in film these categories are more clearly supervisory employees with powers such as, for example, even as to the second assistant director -- of hiring extras, directing extras, doing a great many things in terms of budget which many directors, as you know, even in television do not do; and, therefore, the decision as far as the Guild is concerned is that it clearly represents in television non-supervisory employees, as well as occasionally supervisory employees; but, in the film industry that is not true.

MR. BRODERICK: I have no other questions.

HEARING OFFICER: Mr. Gordon?

MR. GORDON: No questions.

HEARING OFFICER: I have no further questions.

Thank you, Mr. Ricca; you are excused.

(witness excused)

MR. BRODERICK: Mr. Salzman.

Whereupon,

DAVID E.SALZMAN

was called as a witness by and on behalf of the Employer and, having been first duly sworn, was examined and testified as follows:

HEARING OFFICER: Give your full name and title for the record?

THE WITNESS: My name is David E. Salzman, Program Manager, KWY-TV, Philadelphia.

HEARING OFFICER: How do you spell Salzman?

THE WITNESS: S-A-L-Z-M-A-N.

HEARING OFFICER: Thank you. Proceed, Mr. Broderick.

DIRECT EXAMINATION

Q (By Mr. Broderick) Mr. Salzman, how long have you been program manager at KWY?

A About 14 months.

Q And, can you tell us what your connection was with Westinghouse in the broadcasting industry prior to becoming program manager?

A Do you want me to go back from now or start from the beginning?

Q Start from the beginning?

A When I was in college, I learned to be the basics of a producer/director; in around 1965 I went to Detroit and I worked as a producer/director and I also studied for a master's degree; and as I completed the degree, I continued to be a producer and/or director because the things, the assignments changed to some degree; and then I eventually became a member of management as executive producer; as an executive producer of a commercial station, I became a member of the management of that station; prior to that I worked in education as a producer/director for about four years.

Q When you were a producer/director, Mr. [redacted], did you consider yourself to be a supervisor?

A I most certainly did.

Q I show you a document that's been marked Employer's Exhibit 1; can you tell me what that document represents, Mr. Salzman?

A It represents an organizational flow chart for KWY.

Q And, directing your attention to the top block which is marked "GENL MGR," what is the responsibility of the general manager?

A He has general over-all responsibility and accountability for the station, for its operation,

service to viewers, license commitments, everything; he's the boss so to speak.

Q There was testimony the other day, I think by Mr. Pyle, referring to a Frank Tooke, the Area Vice President; what responsibility, if any, does Mr. Tooke have for the operation of KWY-TV?

A Mr. Tooke does not perform really in the capacity of being the boss of the boss in essence over the general manager of the station; he is a corporate staff representative on the scene; his major responsibilities would consider community relations and community service, some legal areas, some FCC areas, and generally representing the corporate entity of Group W Broadcasting; he has nothing to do in the day-to-day operations of the station.

Q And, the general manager, I see, runs to five blocks -- "PROG, SALES, ENGR, PROMO, and BUS." Do they represent the five major departments of KWY?

A Yes, they do.

Q And, as we go down the chart, I note that you have broken out the program department; is that correct?

A Yes.

Q And, you are the program manager?

A Correct.

Q Who is the assistant production manager?

A Well, the Assistant Program Manager or Executive Producer -- he can be called either; it's the same man and the same job -- his name is Dave Beddow.

Q Now looking to the left-side of Employer's Exhibit 1, lines running from Beddow down, the middle block shows "PROD[illegible]-DIRECTORS," and I take it they are the people [illegible] are concerned with in this hearing; is that [illegible]t?

A That's correct.

Q And, to the right of the producer/directors there is a block called "PRODUCTION MGR"; is that correct?

A Yes.

Q And, I take it that job or position is filled by Mr. Little?

A Ron Little.

Q Now can you tell me, sir, why the producer/directors and the production manager blocks appear on the same line?

A Yes, all of these people report directly to the Assistant Program Manager/Executive Producer; I prefer to regard to him as Executive Producer, just because I'm used to that terminology; but they all report to him directly through nobody else.

Q Now there has been testimony that Mr. Little plays

some part in scheduling; is that correct?

A Yes, his function there as production manager is to schedule the production facilities and personnel of the station and all things that are involved with that, which is a rather time-consuming job.

Q So, if I understand you correctly, he schedules both the physical facilities and the personnel; is that right?

A Right.

Q But, if I also understand your testimony correctly, the producer/directors basically are reporting to Mr. Beddow who on this particular chart is referred to as Assistant Production Manager, although you want to call him Executive Producer; is that right?

A Yes.

Q Now under the producer/directors and on the right-side, there is the notation "PROD UNIT"; can you tell me what the production unit consists of, sir?

A By production unit we mean the members of the different production crews for studio work; in other words people like the cameramen, prop people, stage managers, people of that sort.

Q How many people are there in the production unit?

A In the production unit there are approximately thirty people.

Q And, in addition to stage managers, cameramen, prop men, who also is included in the production unit, what job titles?

A Let me just think of that for a second, because I might have covered them all. Lighting men would also be in there.

Q Audio men?

A Not audio men; they are technicians and part of the engineering department.

Q What is included within the art department?

A The art department is made up of six people who work solely in preparing art materials for the st[redacted]

Q To be used on the air?

A The vast majority is used on the air.

Q The employees in the production unit and the art department, are they represented by a union?

A Both the production unit and the art department are represented by Local 804 of I.A.T.S.E. Can I add one thing here about the production manager?

Q If it's helpful.

HEARING OFFICER: Yes, by all means.

A Westinghouse owns and operates five television stations, and one of the things about broadcasting, I think, is that no two stations are exactly the same; part of the confusion relating to Mr. Little's relationship

with the producer/directors is that at our station in addition to operating the TV station itself, we also do a number of productions, including the Mike Douglas Show which is rather involved; therefore, the scheduling function which is normally just a part of what the assistant program manager or executive producer normally does is so involved that we have a full-time guy in Little who is a scheduler; in other words we don't have production managers at all of our Westinghouse stations because you know there isn't as much production going on. So, that is what I'm trying to point out: that...

MR. GORDON: Excuse me for a second; I'm going to object to any testimony about what goes on at other Westhinghouse stations, since the witness has not testified that he has any knowledge of that.

MR. BRODERICK: I didn't get the last part of what you said?

MR. GORDON: The witness has not been asked, nor has he testified with regard to any knowledge he might have about other Westinghouse stations; he's only testified, or he has testified in fact that this is the only one at which he has been employed.

THE WITNESS: No, I didn't testify to that.

MR. BRODERICK: No, he hasn't testified to that. I'll clarify your problem.

Q (By Mr. Broderick) What other Westinghouse stations have you been employed?

A I worked at KDKA in Pittsburgh, KDKA-TV prior to coming to KWY.

Q Are you generally familiar with the management set-up at these five Westinghouse Television Stations in the United States?

A Yes, I'm generally familiar with them.

HEARING OFFICER: Does that satisfy you, Mr. Gordon?

MR. GORDON: Certainly.

Q (By Mr. Broderick) Now you mentioned the production manager at KWY and the reason why you have him performing, because of his scheduling functions. Now when you said that you produced the Mike Douglas Show and the other shows, you're talking about producing for Westinghouse?

A Yes.

Q Not for KWY?

A Yes, the Mike Douglas Show is produced for Westhinghouse Broadcasting Company and not for the station; but it is produced by personnel at the station.

MR. BRODERICK: I move into evidence Employer's Exhibit 1.

MR. GORDON: O.K., obviously I object strongly. I

think the overwhelming weight of the testimony has been that this chart does not adequately or faithfully represent the management structure at KWY-TV; and if it is being introduced as tending to prove the truth that's contained on the face of it, I object strongly; if it's being introduced as a self-serving document purporting to show that producer/directors direct people within the meaning of the Act, then I don't object to it; but it is not in our opinion, and I think the weight of the evidence supports the contention that it is not an accurate representation.

HEARING OFFICER: Bearing your objections in mind, Employer's 1 is received into evidence.

(The document above-referred to, heretofore marked Employer Ex 1, was received in evidence.)

Q (By Mr. Broderick) Now, Mr. Salzman, would you describe briefly and in a general way the nature of the operation at KWY-TV, it's functions and what it's there for?

A. KWY-TV is a privately owned television station owned by the Westinghouse Electric Company that is in business to serve the public and make a profit by broadcasting television programs.

Q And, I take it the type of television program varies from news to specials to public affairs, movies,

the entire gamet; is that right?

A The scope of programming is from A to Z, so to speak.

Q Now would you again describe in an over-all way the relationship or the function of the producer/director in the operation of KWY-TV?

A Many times, when I arrived at a station I had a meeting when I first got there; and at the meeting we had the producer/directors and all of the production personnel -- the producer/directors and associate producers; at that point and many times since then I have indicated that I consider the producer/directors the key group of people at the station; I consider them the key group of people at the station because they are the last touch between the station and the viewers and in producing and/or directing the programs, which is what we are in business to do and what we are licensed to do, they hold the ultimate position. Now from one job to another as it relates to the shows, since the shows vary greatly, a person might be more a producer/director or a director/producer; so there are differences in some of the functions.

Q In the meeting or the meetings that you have talked about, have you made it clear to the producer/directors that you consider them part of the management

group?

A I would say most certainly so.

Q Now how often do you have meetings with the producer/directors as a group as opposed to individual meetings?

A The nature of the television industry is such that you can't schedule regular meetings and expect them to come off necessarily; most of our mass meetings with large numbers of people would occur on an irregular basis, and do you want me to give you an estimate of how many meetings of that type we have had.

Q Yes.

A I would say since I've been at the station, we have had around a dozen or fifteen that I can think of.

Q Attended by the producer/directors?

A Attended by the producer/directors.

Q You say because of the nature of the industry, it is impossible to schedule regular meetings of large groups of people. In view of that problem, how do you go about doing that and communicating with the producer/directors for example?

A I would say that by a matter of personal style, as well as necessity, we have smaller meetings with small groups of people and one-on-one meetings which is the way that I like to do it with great regularity.

Dave Beddow, who as I say is my assistant, may meet with some producer/directors on a daily basis, others almost everyday; in one-on-one meetings you may get into what is a meeting; to me when two people get together to discuss something, they're meeting; that's a meeting.

Q You mentioned Mr. Beddow; do you know whether Mr. Beddow ever functioned as a producer/director?

A I know that he has.

Q Do you know how long he was a producer/director?

A For a number of years; I'm not sure if it was three years or five years or whatever.

Q What is, in a general way, the purpose of these frequent or almost daily meetings that you referred to?

A Well, we are evaluating existing programs; again this would differ from program to program; we're evaluating content and personnel; by personnel I mean not only on-the-air people but some of the people who are on the production crews; we are evaluating where we would like to go in the future, what some of the problems might be as a producer/director sees it or as a program manager might see it or the assistant program manager. So, we are discussing potentially everything, and everything relating to the program.

Q And, you're discussing it with whom -- the

producer/directors?

A The producer/directors, sure.

Q Did you hire Mr. Pyle as a producer/director?

A Yes, I did in concert with Dave Beddow; we don't do anything separately.

Q Where was Mr. Pyle employed at the time you hired him?

A Mr. Pyle was employed at the Group W sister station in Baltimore -- WJZ-TV.

Q And, prior to hiring Mr. Pyle, did you have conversations with him?

A Most definitely.

Q And, can you describe for us the nature of those conversations?

A Well, Dave Beddow, who had also been at WJZ-TV first as a producer/director and then moved up to this executive producer job, was familiar with the work and skills of Mr. Pyle, who I think was there for six or seven years on or off in various capacities including producer/director; we were looking, when I came to the station the major problem was news; and the person who controls the look of the news and how things go off is the news director; and I...

Q Is the director who directs the news?

A Is the director who directs the news, the

producer/director who directs the news as opposed to the news director who is the head of the news department.

Q O.K. Go ahead.

A I had heard that he was a very good producer/director, that he was a take-charge guy which is what we were looking for; we felt we had people who were stale or lackadaisical, who didn't have the leadership, who were not fast, who were just not giving us the kind of shows that we wanted on the air. Since this was a key position, it was the first producer/director job that I sought to fill; I talked to a number of people in and outside Westhinghouse, and I felt that Pyle was about the best guy that we talked to, because when we discussed what his ambitions were and what we were trying to do and the need for a take-charge guy, a leader, he perked up and said that was the kind of guy he was; Dave Beddow, who had worked with him, agreed; and we hired him.

Q Now you made it clear to Mr. Pyle that you were looking for a take-charge guy, a leader; and he agreed that that's what he was looking for; is that right; that's the job that he wanted to fill?

A So much so that we took the gentleman who was the producer/director on the 6:00 and 11:00 o'clock news,

which are the two major news casts on a weekday basis, and scheduled him into other news shows and put Pyle on the top shows.

Q Are the producer/directors paid the same as all other management employees; by that I mean on a monthly basis?

A Yes, they are.

Q And, do they and are they eligible to participate in all management fringe benefits?

A Yes, they do; they have the same options that I have; everybody in management has the same benefits including our disability program, just everything, options in the stock plan and the bond plan, which they may choose to elect as is the case with me.

Q In other words they have the same, they can participate in the same benefits that you can participate in; is that right?

A Yes.

Q And, including the management disability plan?

A Yes.

Q Which I take it, that plan is not open to non-supervisory, non-management types; is that right?

A That is correct.

Q In your opinion, Mr. Salzman, do producer/directors assist in the formulation of management policy?

A Yes, definitely.

Q And, can you explain why or how?

A Well, I think some people outside of the business might have the impression that broadcasting is like all industries; and that is not the case. When we are formulating policy, we don't have a board of directors that sits down at a big table and says yes, yes/no,no; and by democratic process, they decide what a policy is and it's put in a policy manual. In our case as it relates to programming which I am the head of, we make policy decisions on an instantaneous basis frequently, such as the producer/director who is at the board in the control room; he is in charge of that crew and can decide, well he directly controls what goes out over the air at that point during a news show. If I as a supervisor or his supervisor's supervisor don't like what he's doing, it's too late; he's done it. Now there are other shows where control is exercised in other ways; but the point is that in making decisions whether it is during a production or not, where the producer/director may be sitting with me and/or Dave Beddow, the Assistant Program Manager or Executive Producer, when we decide how many guests will be in the show, what subjects as a group, what questbns may be asked, who the guests are going to be, what kind of a

set we're going to use, what the title is going to be, and that kind of thing, we are formulating policy; we're making decisions in the truest sense of the word as far as broadcasting, because it directly relates to the program, which is the business that we are in.

Q So in other words you're saying in your view that the producer/director formulates management policy in two broad areas; one is his control he exercises over what goes out on the air?

A That's right.

Q And, the other is in deciding either individually or in conjunction with you the format and content of certain programs; is that right?

A That's right.

Q There was testimony last week relating to budgets for various programs, and I think there was some testimony from at least one or two producer/directors that they had no control over the budget. What I'd like you to do, Mr. Salzman, for us -- and if it's easier to refer to specific programs, you may do so -- is explain the budget concept in the broadcasting industry, or at least at KWY-TV?

A Well, budgets, again like I think anything else in television, budgets are not a black and white matter, there is this gray area in between; and I'll explain what

what I mean. In the terminology of television and film, budgets are made basically up of two types of costs: above-the-line costs and below-the-line costs, which translate in common language to out-of-pocket costs...

Q That's above-the-line?

A That's below-the-line. Above-the-line costs would be costs represented by the regular operation of the station.

Q Normal operating costs?

A Normal operating costs, that's right.

Q How does that relate to KWY and the programs that these producer/directors either produce or direct?

A Well, each type of program by its very nature and the magnitude of the program...

MR. GORDON: I'm going to object here again; there's been no testimony that Mr. Salzman is familiar with the preparation of KWY's budget and there's been no foundation laid that he plays any role in determining the budget; he may but I just haven't heard that he does.

Q (By Mr. Broderick) Mr. Salzman, are you familiar with KWY's budget?

A I'm familiar with it, yes; we have an accounting department that only is involved with things like budgets; but of course I'm familiar with it.

Q Based on your experience, are you familiar with the budget concept as it applies to the shows at KWY?

A Yes, I am.

Q And, by that I mean certain shows, I take it, have no budget other than what the normal operating costs are and other shows have costs in addition to normal operating costs; is that right?

A That's true.

Q And, you're familiar with the shows that fall into that category or categories?

A Yes, I am.

Q And, we're now attempting to explain the difference between the two categories and why they exist; is that what we're trying to do?

A Yes.

HEARING OFFICER: Is that satisfactory, Mr. Gordon?

MR. GORDON: Yes.

A The vast number of shows done by local television stations do not really have large out-of-pocket budgets; for instance, public affairs shows generally do not have large budgets.

Q (By Mr. Broderick) Do you mean something in addition to the normal operating costs; is that right?

A Right.

Q And, why is that?

A Well, among several things, from an economic standpoint those shows are not really profit-making shows; and I would say most broadcasters would tend, you know not to spend an inordinate amount of money on a regular weekly series where you're not getting back commerical revenue.

Q Well, let's take the public affairs shows; now is Big Kid, Little Kid about which there has been testimony a public affairs show?

A Yes, it's public affairs/educational.

Q Is Melting Pot?

A Melting Pot is public affairs.

Q And, with respect to those shows, you're saying that you do not sell paid avertisements for those shows; is that right?

A Yes, it's generally true that on most of our public affairs series we do not sell paid advertisements.

Q And, in view of that fact since they're viewed as public affairs, you do not have this additional budgetary item, so-called, in addition to the normal operating costs; is that right?

A Generally so. You know there are exceptions; again I'm saying each show in of itself is an entity; Mr. Schmidt last week referred to the fact that for three years he was producer of a show called Contact; we

have a show which really to me is the same thing as the Contact Show; we call it the Marsha Rose Show where phones are employed and viewers can contact directly the guests and host or hostess of the show; that show has a budget which includes normal operating costs as well as out-of-pocket expenses.

Q Such as; explain?

A It could be guest fees, transportation, meals, props, buying books and records; and in that case the producer/director involved in the show, she is, you know she's primarily a producer; in this case it's a staff producer/director who is basically spending her time producing the show; she has a budget which she implements and is responsible for; and frankly from day-to-day I don't know if she's exactly on budget; all I know is that since I have to ultimately approve those expenditures that in the last week there have been several of several hundred dollars; so, yes, they do implement and control budgets.

Q Well, let's talk about the staff producer/director on that show; what is her name?

A Her name is Susan Horowitz.

Q And, you're saying that she has available certain sums of money which she can utilize and expend; is that right?

A Yes.

Q And, before she spends it, does she get your approval?

A No, no except in, I can't even recall a case, she may have in some cases talked to Dave Beddow, but I would say either all or a vast majority of the cases she controls her own budget; she is accountable for it; she is responsible for it.

Q Now you mentioned that Mr. Schmidt served for three years -- and I think he did testify to this -- as the producer of Contact which was a show that preceded the Marsha Rose Show; is that right?

A Yes.

Q When he was the producer of that show, did he have this type of budget -- out-of-pocket budget -- that we're talking about?

A Yeah, there was a budget on the show.

Q And, what responsibility or authority did he have with respect to that budget?

A Well, I wasn't here at the time; you know I reviewed this with people who were, and I understand that he had the same relationship as the present producer/director on the show; that he was responsible for the budget; that was part of his over-all responsibilities.

Q So, in other words if we have at KWY shows that have these out-of-pocket budgets associated with them, the responsibility for that budget and the authority to spend it rests with the producer/director; is that correct?

A Yes.

Q Let's turn now, Mr. Salzman, to the news operation, the news shows about which there has been not inconsiderable testimony. With respect to your basic news shows, the 6:00 and 11:00 p.m. shows, for example, what does the crew consist of?

A Generally it will be three camera people, props, lighting, stage manager, audio, film projectionist, video tape recording operator; and I would say that is the normal complement of the people. There's a crew chief in master control who is working on a number of functions, including making sure that things follow the log and fill out a variance report and other things. Those are the people that he would be dealing with -- the producer/director.

Q The producer/director. Now in addition to those people that you named, including the crew chief, I take it they're all members of Local 804, I.A.T.S.E.; is that right?

A Yes.

Q Now what is the producer/director's function or responsibilities with respect to that crew that you just described?

A Well, starting first with the show itself, as it is happening he supervises all personnel involved with that show; he is in direct control of the show; he's accountable for that show getting on the air and getting off the air.

Q Now let's just take the time during which the show is on the air; he is responsible for them and supervises them; now how does he exercise that responsibility or that supervision with respect to these individuals that you have mentioned?

A He tells them what to do.

Q All right, give me some examples?

A Well, if he is not there, there is no one to do the show; there is no one to coordinate and supervise those people and get that show on the air in the context of news, we're talking about.

Q Right.

A There's no logical assistant director or anybody else like that; he's it, or she's it if there is a woman there performing the duties.

Q Well, give us some specific examples; let's talk about the cameramen; the show is on the air, how is

he directing the cameramen?

A He's telling them what their shots are.

Q For example?

A He is telling a cameraman that: stay in your position, when I switch to the other camera I want you to move your camera over to the left and I want you to zoom in and get a tight shot of the reporter who's coming on next and then after she's finished you are to zoom out to a two-shot; then we're going to go back to the other camera; then you're going to turn your camera around to the left and zoom in on the easel and get me some of the visuals there. And, you know as the show progresses there are a number of different shots that the cameramen take; they don't take the shots on their own; they do not have a script; you know they're under the direction of the producer/director.

Q So, the producer/director is telling these people what to do in order to get the show on the air; is that right?

A Exactly.

Q And, you say if he wasn't there to do this, there wouldn't be anybody to do it; is that right?

A That's right.

Q What's this switcher that there's been testimony about?

A Do you mean the switching console, the piece of equipment.

Q Yes.

A It is a panel, I don't know, about two feet wide, a foot high, that may look a little bit like a typewriter; you know there are a number of lines with keys; to someone who doesn't know anything about broadcasting.

Q And, an experienced producer/director when he's operating the switcher, does he operate it like a typewriter?

A I would say so, sure.

Q And, while operating that, I take it, he's in direct contact, voice contact with this crew that you talked about; is that right?

A Yes, we have a communication system where, emanating from the director; he has everybody on generally headset communication and can talk to them and tell them what to do.

Q And, he is, in addition to operating the switcher, telling them what to do; is that right?

A Sure, that has always been the case in our station.

Q With respect to this crew that we're talking about again in the news show context, does the

producer/director have the authority to rearrange the jobs within the existing crew and who performs them?

A The producer/director has the right to assign the people on the crew that is assigned to the show.

Q There's a set crew assigned to the show, but with respect to that crew what...?

A Yes, there's a crew that's scheduled; and if the producer/director takes out, you know let's take for example the people that are on the floor, only the people that are in the program unit, the program technicians, in other words the three camera people, props, lighting, and stage manager; yes, he can switch them to fit his own desires.

Q Do you have situations at KWY for some reason the 11:00 o'clock news is going to be postponed and not go on at 11:00 o'clock?

A Yes, sure.

Q How does that occur?

A Well, I'll give you a recent example; NBC has just gone to Monday Night Baseball which has been on for two or three weeks; and I know the last two weeks, the games have run over; so the 11:00 o'clock news has not started at 11:00; one time it was around 11:05 and one time about 11:15.

Q And, what happens when the baseball game is going

to run by the normal starting time for the 11:00 o'clock news?

A We still do the news.

Q And, that means that the technicians and the crew that is working for the producer/director are on overtime at that point?

A Some of them are, yes; some of them will be by the time the shift is finished, according to when the show starts.

Q And, if it is necessary for the show to start late because of some other condition, the producer/director is authorized to have those people perform their jobs even though it entails overtime; is that right?

A Definitely.

Q Mr. Salzman, what would you do in the event that an 804 technician for no valid reason at all just absolutely refused to follow the direction...

A Can I interrupt you for just a second; because of this blower it's a little hard to hear and I've got a play-by-play going on in my left ear which is closer than you are which is rather distracting and it's kind of hard to think. You know I'm saying things; and he's saying yes, it is and no, it isn't and yes, it is; which is fine; I'll be happy to answer any questions

anybody wants to ask; but it's rather disconcerting to say the least.

HEARING OFFICER: Mr. Gordon, can you have your people speak a little more quietly.

MR. GORDON: I'll have to state on the record that Mr. Pyle is assisting me; both Mr. Salzman and Mr. Pyle know the industry, and I don't. I need his comments, but I'll have him talk silently.

HEARING OFFICER: I'm not forbidding it; I know you don't intend to distract the witness, it's not intentional. Mr. Broderick.

Q (By Mr. Broderick) In the situation I was painting, Mr. Salzman, assume an 804 union member, a member of a particular crew, a news crew, for no valid reason at all just absolutely refuses to follow the directions of the producer/director and that is reported by the producer/director with a recommendation signed by the producer/director that something be done; what do you do -- you?

A Well, I can't recall that someone has outright refused to do things; you know, through a whole show; but in a case where someone is not fulfilling the command at the direction of the producer/director and he informs us of this, as he would, of course, and recommends that something be done, you know we would of

226a

course consider it; and if appropriate action need be taken, we would.

Q And, in fact, have you for example reprimanded 80% people upon the basis of a recommendation or report from a producer/director?

A Yes, as I was saying we haven't had a severe case of insubordination where -- since I've been at the station for a year or so -- where we have fired somebody, let's say; but there have been a number of cases, some of which I can recall at the moment, where a certain person, a stage manager, in fact, two people have not performed as well as the producer/director on the show has wanted; and he has informed us, and they have been severely reprimanded.

MR. BRODERICK: I'm going to go to another subject now, and Mr. Salzman has been without sleep for a number of hours because of the reasons that I discussed with you last Friday. I wonder if we could take about a five-minute break before we continue.

HEARING OFFICER: Yes, by all means. We'll take about a five minute recess.

(A five minute recess was taken)

HEARING OFFICER: On the record.

Q (By Mr. Broderick) Mr. Salzman, let's direct our attention for a while to the function of the

producer/director in the non-news situation. Describe for the record generally what his or her function is in that regard?

A Well, as I stated earlier, the function can differ somewhat from show to show; some of them require more time or a totally different category of programming; but generally speaking the producer/directors at the station who are not spending most of their time on news would be producer/directors in the truest sense of the word; they would be responsible for their shows, all aspects of budget where that is relevant to the specific show, personnel, guests, content, making sure it's on the air, subject matter, these kinds of things. You know making the decisions necessary to get the show on the air. Sometimes in communicating that to other people like myself or my assistant DaveBeddow or sometimes you know unilaterally.

Q Unilaterally?

A Unilaterally, yes.

Q In other words when they function as a producer/director you are saying that they have the over-all responsibility not only for the content but also for the way it looks when it goes out on the air; is that right?

A Yes.

Q And, I'll ask you, Mr. Salzman, let's take the program like Big Kid, Little Kid for example; you view it a few times and you are dissatisfied with: (a), the content; and also let's say the end product as it goes over the air; who do you go to about that?

A If I view it and I don't like what's going out on the air.

Q Yes.

A Fortunately it hasn't happened in conjunction with that show, because it's been going O.K. But, I'd go to the producer/director; there's no one else to go to.

Q In other words you view the producer/director as the person who is responsible for that particular show?

A They're in charge of it, and they're accountable for it; if we don't like something about the show, we'll bring the person into the office and sit down and talk and find out why; sometimes you know you're at home and you look at something and say, ghee, why did they do that, and sometimes the circumstances that were prevailing when the show was produced, it was necessary; you can't jump to any conclusions. So, you have to talk to the person who is in charge.

Q Let's talk about Big Kid, Little Kid. You say that's a relatively new show?

A Yes, it's definitely a new show; we've been on the air, I'd say, about five or six weeks.

Q Will you explain for us how that show came about?

A The show basically is geared to children; in fact it is geared to children entirely; and we had another show which we had problems with and that had run its course; so we wanted to develop a new show. And, in sitting down with Dave Beddow, we talked about what kinds of children's shows we should come up with and who in his opinion, since he was in charge of the producer/directors, who he thought would be a natural to do this. He mentioned Dick Pyle because apparently in Baltimore, they were both there at the same time and had either developed or worked on a successful children's show which Mr. Pyle was the producer/director of. So, Dave Beddow suggested that we consider Pyle and give him the first shot at doing the show.

Q And, did you then call Mr. Pyle and discuss it with him?

A Yes, we did.

Q And, what part did Mr. Pyle play in devising the format of the show and the content of it?

A Let me just finish up my last statement; we called him in and he was very anxious to do the show. So, we said terrific, give us a treatment, give us a

written treatment on the show. We had formed general concepts of what the show would be; I had an idea and a working title which I was able to discuss to some degree with Mr. Pyle, at a later date; and this was after he gave us his written treatment of the show, what he would like the show to be like.

Q And, did you then discuss that written treatment with him?

A Sure.

Q And, what was the end result, how closely does the show now resemble what Mr. Pyle suggested or recommended?

A Well, first of all in formulating the decisions to put a new show on the air, a lot of opinions are considered; I would say from my recollection of what was on that sheet, the treatment that Mr. Pyle gave, that it most closely resembles what he wanted; it was, you know he had stated that he likes animals and likes to work with animals. On my treatment for instance, I didn't have animals as a regular feature in the show. Everything that I suggested went out the window, which is O.K., because the show, I think, is better than what I had figured. It is essentially in my opinion the show that he lined out; and after our initial meetings, he worked with Dave Beddow and they had a number of meetings

before it went on the air and since then, discussing different things.

Q Now what is Mr. Pyle's day-to-day responsiblity with respect to this particular show?

A Well, again this is, broadcasting is not like a factory operation where you clock in and clock out and you know exactly because you've got supervisors over supervisors and foremen and you know exactly what the guy is doing, because he is constantly under surveillance. In this case his day-to-day function is producing and directing the news at 6:00 and 11:00, producing and directing it in concert with the [redacted] department naturally. At pretty much his own, [redacted] own decision he can use whatever time he wants [redacted] into the show; he's got a weekly time when we edit the show and we put it together; but the preparation in discussing with the talent and the production assistant who is on the show what they're going to do and what the segment is going to be and those kinds of things, he would decide that. I certainly haven't said anything about it; there is no schedule and you will do this from this time to that time on that day, other than you know the studio part of finally bringing the show together.

Q So that eventually the content of any one of those

particular shows is Mr. Pyle's responsibility; is that right?

A Yes, sure.

Q Now what type of a crew does Mr. Pyle have on this Big Kid, Little Kid Show?

A Do you mean when they're putting it together in the studio.

Q Yes.

A Well, it's a studio show; it's basically a studio show.

Q What do you mean by a studio show?

A Well, it's a show that's produced in the studio and the vast majority of the elements in the show are produced as, you know the show is happening in the studio; there are other kinds of shows which we do which are largely film which is not shot in the studio but shot you know at numerous locations and mixed in together and put usually on video tape. This is basically a studio show -- Big Kid, Little Kid.

Q And, what type of a crew is assigned to that show?

A The standard crew; we've got people on the camera, we've got a stage manager, and a prop man, I believe, where necessary we would have a projectionist and a video tape operator who at least would be recording the

show; so it's a pretty standard crew.

Q Who is responsible for seeing that those particular individuals perform their jobs?

A The producer/director, Mr. Pyle.

Q And, who is responsible for telling them what to do in order that they perform their jobs properly?

A Mr. Pyle is. I just want to add one thing; it is a modest production, and it is one of the examples where I think the producer/director is, even from the ideational phase, is in basic control of that show.

Q You mentioned that Mr. Schmidt was the producer for Contact; is that right?

A Yes, and I think he stated that the other day, for about three years. Everybody who has produced a Contact Show, which I guess has been in existence for ten or eleven years in some form or another, it may be called the John Smith Show or whatever, but the Contact format has been handled by producer/directors with one exception throughout the string of talent changes and producer/director changes; it's a staff assignment.

Q Mr. Schmidt is also at the present time the producer or director, I forget which, on the Seven Days Program?

A I don't, I'm not exactly certain if he's still working -- Mr. Schmidt?

Q Yes.

A I'm sorry; my mind is running. Yes, he is; he works on the show; you know, again it's a matter of semantically what you want to call him; I consider him the producer/director on the show. However, the guy who is the talent on the show is a newsman; he's a member of AFTRA under a newsman contract; and he definitely participates in the selection of stories and in the writing of the stories besause of you know, union jurisdictional things; and he'll be involved in the assignment of the shows. Mr. Schmidt, I think as he outlined pretty correctly, would supervise the editing to make sure that things work out to time and decide what shots go in and will execute as the producer/director the final compositing of the show. That show is atypical of most of the local shows that we do in that it involves a lot of film, and it is a rather involved production that costs us considerably more than most single shows we do on a weekly basis.

Q Mr. Schmidt indicated that he worked from, I think he said an outline; is that true, is he bringing no discretion to bear on what goes into the show at all?

A Of course, he's bringing discretion into it; you know I think he mentioned that, you know after the show the guy who hosts the show, you know it's endemic to

talent to frequently complain; and he has complained to the guy who I consider the producer/director on the show. Mr. Schmidt incidently pointed out, and I think accurately so, that the ideal would be for a producer/director on this kind of a show to spend the vast majority of his time producing rather than directing and the directing might involve a few hours a week in the studio where he's directing the complete composite of the show; the rest of the time -- again semantically what the public views as a producer is kind of a roll-your-own-thing, it differs from situation to situation; he's producing the show; he is producing the show when the stuff is being edited for instance and there's something where taste is involved or technical judgement or artistic control, then he's the guy with the film editor who is saying, ghee, I don't want to put that in or I like that; let's do that. So, yes, he's acting as a producer/director on the show. I don't know if that answers your question.

Q Well, in other words you're saying that in performing this function or functions, Mr. Schmidt is required to and does exercise considerable discretion in what the end product will look like?

A Yes, I would say yes.

Q Now I take it when we get to the directing stage

of Seven Days that in your view Mr. Schmidt performs like the directors perform on both the news shows and Mr. Pyle performs on Big Kid, Little Kid in directing a particular crew; is that right?

A Right, but I'd like to draw a distinction; you know before we started today the DGA representative made a delineation between what a director in a film sense is versus what the normal director or producer/director in the television sense is; and as I said and as Mr. Schmidt has said, this is essentially a film show, the vast majority of the material is film; it's a film show. So, you know you can quibble over whether or he's a director or the producer; but since it is a film show, he's making the kinds of judgements that directors generally would make on a film show; that is, you know...

MR. GORDON: I'll have to object to that, because the record will show that film in Mr. Riccа's testimony was an abbreviation for motion picture; I think it's clear, although it may not be apparent to the witness.

THE WITNESS: Well, these are motion pictures too.

MR. GORDON: Motion picture is a feature length motion picture released through theatres for broadcasting.

THE WITNESS: You only represent directors in feature length...

HEARING OFFICER: Just a minute, please.

MR. BRODERICK: This is a very interesting colloquy, but maybe we ought to wait until cross examination.

HEARING OFFICER: Was that an objection to the question?

MR. GORDON: No, it was a statement made for the purpose of clarifying the record.

HEARING OFFICER: All right, then I don't have to rule on it. Proceed, Mr. Broderick.

Q (By Mr. Broderick) Let's talk a bit, Mr. Salzman, about a show, Speak for Yourself, that I think Mr. Herring is the director; is that correct?

A Yes, he is.

Q Now would you explain...

A Let me clarify that too because as consistent with what I've been saying, each show in of itself is an entity; he is the management representative on that show; and since it involves a number of agencies and including an institution of higher learning and a government agency, he is not the only director on the show; he is performing, as I understand it, in his function on the show largely as a technical director; but, the key reason why we have him there is as the management representative on the show; there is no one

else there of any authority who can say, hey this is a problem or here's the way we're going to do this or as Mr. Herring pointed out to bring things to the attention of either myself or Dave Beddow.

Q In other words he's the only Westinghouse management contact with that particular show; is that right?

A Yes; when Dave Beddow and I were discussing who we would assign to it, who we were going to assign as a management representative on the show, because as I say there are outside agencies involved with us in producing the show; it's a cooperative venture; it's different from any of the other shows that we've discussed; it's a rather involved project.

Q As I understand it, a number of segments have already been taped; is that right?

A Well, complete shows, there are at least nine to my knowledge that have been completed; and the series can include anything from fifteen to ninety shows and anywhere from a year to a couple of years. So, now nine of them are completed and others are in various states of completion.

Q And, when will they be finally shown on the air?

A We don't have the exact date as far as that is concerned.

Q But, it could run as high as ninety shows?

A It could, yes, because again Westinghouse stations produce a sixty-five part educational series, at least one such sixty-five part half hour program per year; and this will satisfy part of our own company's requirement to do such.

Q And, as you said...

A It will air on our station and other Group W stations as well as, it may in fact; it will be distributed nationally and internationally and may be so distributed by our own Group W Productions, or it may be the government or somebody else; as I say it's a rather involved project and it's an important project for us.

Q And, the Westinghouse contact with that show is, as you put it, Mr. Herring?

A Right.

Q And, you view him as the management representative for Westhinghouse on that particular show?

A I certainly do.

Q Mr.Herring also produces and directs Melting Pot, does he not?

A Yes, he does.

Q Would you describe for us his responsibility and function with respect to that particular program?

A He's responsible for the whole show. When you're saying responsible for the whole show, on a weekly continuing series what you're basically talking about is the subject matter and the guests, when you're talking about a public affairs show that has a talk format. So, as he outlined and as is the case, we each week tackle a major interest of community importance; and a number of people sit in a configuration and discuss it with the continuing host on the show. Those guests and those subjects are picked by Mr Herring.

Q And, when he performs his directing function on the show, he's operating the way you've described that directors operate generally directing his particular crew, is that right?

A Generally, yes.

MR. BRODERICK: This is a four-page document which I asked to be marked as Employer's Exhibit 2.

(The document above-referred to was marked Employer's Exhibit 2 for identification.)

Q (By Mr. Broderick) Mr. Salsman, would you take a look at what's been marked as Employer's Exhibit 2 which is a four-page document and tell me what it is?

MR. GORDON: Can I have just a minute to read it, please.

Q (By Mr. Broderick) Can you tell us what that is,

Mr. Salzman?

A The exhibit is a few of the daily reports which Mr. Pyle writes up on the two daily news shows that he does on a Monday through Friday basis. These are submitted to Dave Beddow as the exhibit states.

Q And, you do see these, is that right, Mr. Salzman?

A I see them on a regular basis; you know I may miss one or two days, but the key thing is that Beddow sees them and I know that he sees them.

Q And, based upon the ones that you have seen in the past, do these appear representative of the reports that Mr. Pyle makes regularly?

A Yes, they would appear to be.

Q With respect to Page 1 of this exhibit and the first reference to the "6 PM NEWS," it indicates, doesn't it, that Mr. Pyle was not particularly happy with that show; isn't that right?

A Well, he calls it "A DISASTER." I imagine that he was very unhappy with the show.

Q Look at the 11 pm news, and go down to the end of the first paragraph; there, I take it, Mr. Pyle is commenting upon the skill or the ability of the "new summer relief cameraman"?

A Yes, he is doing so; and since the producer/director

is in control of the crew and works with new crew people who are in under, it's up to the dictates of our I.A.T.S.E. 804 contract, there's like a six-month evaluation period.

Q You mean a six-month probationary period?

A Probationary -- well, you can call it whatever you want; in fact, the contract, I believe, calls it a probationary period. The people who are in the best position to evaluate them are not people like me; I'm very rarely in the studio; I'm an administrator. We would rely very heavily on what producer/directors would say. Now they may say things on an unsolicited basis or a solicited basis; and based upon a lot of those things, we will decide whether to keep that person.

Q Well, in other words during this six-month probationary period, the producer/directors comment and evaluate the performance of these people; is that right?

A They comment on them on a day-to-day basis, not to say everyday; and sure they're evaluating them; and I think it was Dick Pyle who said the other day if a new guy is out there and he's not hacking it, he'll tell us, in Pyle's case in no uncertain terms.

Q Now what weight do you give to these comments and evaluations in making your determination whether

the employee is going to last beyond his probationary period or not?

A I would say we give it considerable weight. Now again I generally, you know the way our structure is I deal with Dave Beddow who is the supervisor of the producer/directors; he works with them day in and day out; and I'll say to Beddow, you know, ghee, this guy's probationary period is running out in three weeks and if we stay with him beyond that, we've got him permanently; what do you think of the guy; what do the guys who work with him think of the guy; and he will, you know he will say so and so, this director Pyle may work with him or Herring and they said he's bad in this and good in that; and that's where we'll make the judgement. I don't really get a chance to see these guys in action, these probationary people; so I would say we rely very heavily on what people like our producer/directors would recommend.

Q Take a look at Page 2 of that exhibit on the second paragraph relating to the 11 pm news, Mr. Pyle is commenting that perhaps "...some of the projectionists.. need a little more training on the device; is that right?

A Yes, again I would say that endemic to the business, talent may be the biggest complainers; but as

a former producer/director and someone who loved that work and tries to be still involved in it to some extent, I'd say the producer/directors constantly will complain because they're responsible for the show and generally the good ones are perfectionists; if something is wrong or if someone is not adequately skilled, they'll let you know or let him know too.

HEARING OFFICER: Mr. Broderick, may I ask?

MR. BRODERICK: Yes, sir.

HEARING OFFICER: Mr. Salzman, how about some explanations as to the technical terms on Employer's 2.

MR. BRODERICK: Right. What do you want?

HEARING OFFICER: Say for example on Page 2, 11 p.m. news, "CHIRON DIED"?

THE WITNESS: Well, O.K., that is pronounced chiron. Chiron is a character generator which is a piece of equipment that will generate visual information such as baseball scores or a name super, we call it a name super; and that will be superimposed at the bottom of the screen to let you know that Smith is talking.

HEARING OFFICER: Now at the top of the same page, there is "ATC"; what does that stand for?

THE WITNESS: Probably audio tape cartridge which would be a piece of audio tape in a cartridge setup where

on a prerecorded basis a reporter has made some comments which the director will mix in with film or other sources in the show, so that it all comes out, you know it all hangs together.

HEARING OFFICER: I see. Also on the bottom of the same page, I see "VTR"?

THE WITNESS: VTR is video, it's either video tape or recorder or, well say video tape recorder; that would be the piece of equipment that handles the video tape. In this case there are a number of elements, quite a few numbers of elements coordinated by a director in a news show; among them is slides and video tape. So that there are different segments that are pretaped and used in the show. So, that's what he's referring to, one of those video tapes.

HEARING OFFICER: All right.

Q (By Mr. Broderick) All right, take a look at the third page, Mr. Salzman, the first report relating to the 6 p.m. news where there's a comment critical of Audioman Hoffman. Mr. Hoffman would be a meber of Local 804; is that right?

A Yes.

Q Now turn to the last page, if you will; I don't see any terms in there that aren't spelled out; but basically with respect to this news, Mr. Pyle is

detailing the major crew problems that existed that evening; is that correct?

A Yes, it is; in fact, I notice the name of one guy who was a stage manager who was one of the two guys that I was referring to before; and I know that Mr. Pyle has had continuing problems with this guy, giving him what he wants and has complained about it.

Q So, he's one of the two guys you referred to before, but referred to before in what context?

A As stage managers whose work he is not happy with. Andy McKay, the guy stated here, is one of those guys.

Q In addition to these types of regular reports submitted by Mr. Pyle, has Mr. Pyle either orally or in writing for that matter given you suggestions concerning the over-all presentation of the news program, for example, and how it could be improved?

A Yes, he has, yes, on both solicited and unsolicited bases; he has certainly, he has communicated to me; in the case of the writing he would write out what he feels is good or bad with the show and how certain people are performing; and in line with the comments I made earlier about Mr. Pyle, he is one of the best people we have; we hired him as a take-charge guy and told him that there were a lot of things on our news shows that were bothering us, that materials weren't being

delivered, that they were inappropriately prepared, that the shows were sloppily put together and there was a lack of leadership. And, a number of times since he has been at the station he has let us know many times -- one time I asked him to make a series of reports with recommendations as to what were the problems leading up to mediocre news shows, and he has done so. And, I've read them and we've picked up on a lot of the things that he suggested.

Q When you say picked up, do you mean you followed through on his recommendations?

A Yes, as the producer/director on the show he'll say that one producer doesn't give him this material and the guy will say that the news department is not backing him up adequately or that there's too much noise in the control room or we keep assigning someone to the crew that he is not happy with; and quite a few of those things where we could we took action, and the show has improved considerably.

Q Do you feel as a result of the suggestions made by Mr. Pyle?

A I would say his suggestions most definitely contributed to the improvements; which you know when I say improvements, I am much happier with the way the shows look and so are the people at the station and the

ratings have improved since those reports, the ones I'm talking about, you know they were in January.

MR. BRODERICK: I move in evidence Employer's 2.

HEARING OFFICER: Mr. Gordon?

MR. GORDON: I would object to it, for the reason that -- I withdraw my objection; I have no objection.

HEARING OFFICER: Hearing no objection, Employer's 2, which we don't have a title for; Mr. Broderick, would you describe what it is?

MR. BRODERICK: Well, Employer's Exhibit Number 2 represents, it's a four page document which includes reports rendered by Mr. Pyle to Mr. Beddow concerning the 6 pm news and the 11 pm news on which Mr. Pyle is the director; and as Mr. Salzman testified, these are representative of the type of reports that are submitted on a daily basis.

MR. GORDON: I have a question on that.

HEARING OFFICER: Let me just shorten the title. Employer's Exhibit 2 which is received in evidence is "Reports from a Producer/Director to His Supervisor." Is that correct?

MR. BRODERICK: Yes.

(The document above-referred to, heretofore marked Employer Ex 2, was received in evidence.)

HEARING OFFICER: Mr. Gordon?

MR. GORDON: I may need to renew my objection. Is this purported to be a discrepancy report?

HEARING OFFICER: What's your question?

MR. GORDON: Is this called a discrepancy report?

MR. BRODERICK: No.

MR. GORDON: It's not a discrepancy report?

MR. BRODERICK: No, it's not a discrepancy report.

MR. GORDON: We have no objection.

MR. BRODERICK: Cross examine.

HEARING OFFICER: We'll take about a five minute recess.

CROSS EXAMINATION

Q (By Mr. Gordon) Mr. Salzman, you are familiar with the 11 o'clock news for example as one television news program?

A Yes, I am.

Q Is there a control room wherein the producer/director sits?

A Yes, there is.

Q While the program is on the air?

A Yes.

Q Who else is in the control room?

A In the control room generally would be a news editor, an audio man or audio person, and that's it; now

there may be other people there, but I mean that's generally the case.

Q Now you say a news editor; you heard Mr. Pyle's testimony and the testimony of the other producer/directors at the last session and they referred to someone in the control room with them as a producer. Do you expect that's the same person that you call a news editor?

A Yes, he is a news editor, though; there's no such thing as a news producer in our station; and the AFTRA contract so stipulates in that way.

Q And, in fact is the news editor in the credits that run at the end of the program, is he listed as a news editor or is he listed as something else?

A We've had so many changes in the credits that I don't know how he is listed now; he's been listed...

Q Would it surprise you if he's listed as a producer?

A Would it surprise me.

Q Yes.

A No, it wouldn't surprise me.

Q I mean he is called that by some people?

A By some people he is called a producer, sure.

Q And, on the chart that has been submitted in evidence as Employer's Exhibit Number 1, is the person

who you are referring to as the news editor, the group of people listed as "Editors"?

A Right.

Q What is it that the general manager of the station does specifically?

A Specifically -- you're right, we're going to be here for a long time. He is accountable and responsible for the entire operation of the station.

Q I know you said that, but specifically what, what are some of his duties?

A His duties will greatly vary from day to day.

Q Can you give us an example of his duties; [redacted] one duty that he has in the furtherance of his [redacted] responsibilities?

A He presents editorials at the station and is the editorial voice and official spokesman for the station.

Q Does he play any part in hiring or the day to day operations of the station?

A That's a two-pronged question; which one do you want me to answer first.

Q Hiring?

A Does he play any part in hiring, he will play a very direct role in the hiring of top management personnel; in other words I report directly to him; and

if I were to leave, my replacement would be someone that he would play a key role in hiring.

Q Would he play a role in hiring the executive producer?

A He would play either no role or a very minimal role. I would say, you know and to clarify "minimal role," I mean he would be my assistant, the executive producer...

Q Are you talking about the assistant program manager or the executive producer?

A Yes. Incidently that title has changed historically throughout Westinghouse; you know they have historically been called one and then the other. I choose him, and before I chose him if I elected to I would go to the general manager, and I'd say I'd like you to talk to this guy because I think I'm going to hire him.

Q So, the general manager would play a part in hiring someone to fill your position. What other positions would he play that part for?

A The major department heads.

Q What is the head of the engineering department called; does he have a title?

A Well, he's called the engineering manager; but this station is different than others because you know

we also do a lot of production for our production company; so he's called an engineering manager, and then there is a chief engineer under him and some other supervisory people.

Q The chief engineer is under him?

A The chief engineer is under the engineering manager.

Q You said you went to college to learn to be a producer/director; what college did you go to?

A Undergraduate work at Brooklyn College in Brooklyn, New York; master's degree in mass communications at Wayne State University in Detroit, Michigan.

Q And, what station in Detroit did you work for?

A I was a regular employee on the staff of WXYZ-TV, Kaiser Broadcasting in Detroit, and worked for other stations in a freelance capacity at other times in Detroit.

Q You said you eventually became part of management at this station; is that correct? I may have misinterpreted what you said.

A Yes, I think you might have; I stopped being a producer/director and started being an administrator.

Q Well, the question that was specifically asked, I know, was: you eventually became part of management. I don't remember how the question was exactly phrased

to indicate whether it was at this station or another one?

A At WKBD I started out as a producer/director and worked up to executive producer on various shows, and then I became executive producer of the station and eventually I became program manager where I had no direct functions in directing or producing shows.

Q What does the executive producer at KWY do?

A All right, now you were just discussing KBD and now you're switching to Philadelphia.

Q The executive producer on this chart reports directly to you; is that right?

A Yes, he's assistant program manager.

Q What does he do?

A What does he do. First of all he is responsible for everybody in the program department.

Q What else?

A He is responsible for making sure those people perform their duties so that shows get produced and get on the air; and in specific cases he would have more individualized activities with different groups of people.

Q I'm not sure that I follow what you mean?

A Well, his relationship to the public affairs department might be different than his relationship to

the producer/directors; public affairs schedules public service announcements, and the producer/directors have very little to do with that, although occasionally they will be producing something.

Q What his his exact relationship with the producer/directors?

A He is their direct supervisor.

Q What does he do with regard to them in his capacities as a supervisor?

A Well, he first of all will tell the production manager who he wants on which shows so that the production manager can make up the schedule; you know he'll tell him that Dick Pyle is going to be doing the 6 and 11 news Monday through Friday and so on and so forth with each person; he will do that; he will maintain a day-to-day or continuing dialogue with the producer/directors to discuss what's going on, to hear them out, to tell them you know what he thinks; he is also involved in certain budgeting and bookkeeping and records and has some administrative functions.

Q Who prepared this chart, do you know?

A I was involved in preparing it. Do you mean who drew it up?

Q Who drew it up?

A I drew it up.

Q With whom did you consult with you drew it up? I don't mean with your attorney; I mean with what other people in the station?

A Dave Beddow and our Business Manager Chuck Gidel.

Q Now you testified before that the executive producer is the direct supervisor of the producer/directors; and as you know, that contradicts substantially the testimony of the first session?

A I'm sorry about that.

Q Yes. Is it your testimony that Mr. Little is not a supervisor with regard to the producer/directors?

A That is definitely true; it is definitely true that the direct supervisor of the producer/directors is at our station and at all of our stations the executive producer.

Q Does Mr. Little, to your knowledge, ever advise, ever tell the producer/directors that they have been coming in too late and they haven't been doing such a good job and the quality of their program is no good; does he have the authority to do that?

A Anybody who works at our station could communicate with anybody else; and if they are both involved, two parties or a number of people are involved in the same activity at the station, like production, I would hope that they would communicate; I would hope that the

producer/directors would tell the production manager that they don't like some ofthe people on their crew and the equipment wasn't there or that the lighting wasn't good; and I would expect conversely that the production manager would tell them that he wasn't particularly happy with the way he looked at the show. But, he is not saying that as a supervisor of the producer/directors; nor are the producer/directors supervising the production manager when they complain about what he's doing, and they do.

Q Is your testimony then that he has no authority from you or from anyone else to give orders to [redacted] producer/directors?

A What kind of orders.

Q Any kind of orders; are you saying he doesn't supervise them; a supervisor gives orders; someone who is not a supervisor can't give orders. Now I'm asking you does he have the authority to give any kind of orders to the producer/directors?

A Wait a second. You said someone who is not a supervisor can't give orders, right; if that's what you're saying, I don't understand your question because the production manager is a supervisor. O.K. I never said he wasn't.

Q He's a supervisor, but you're saying he's not a

supervisor of the producer/directors; is that correct?

A He's not their direct supervisor.

Q Is he a supervisor in any capacity; does he supervise any aspect of their work?

A I'm not trying to be evasive, O.K.

Q O.K., and I'm not trying to badger you. You say he's a supervisor, but does he supervise them?

A He is not their supervisor; he is the scheduler. Now as the scheduler, if he notices that somebody is habitually tardy, I would hope that he would communicate to them; and many times, in fact all the time I would like to think if he's got someone who is not showing up on time, he'll come to myself and/or Dave Beddow; he'll say I've got a problem with this guy. Now this is a specific case that has occurred within the last several months; this guy is not showing up on time and he's not prepared you know for his shows.

Q This is a specific case that occurred?

A Right.

Q Was this with regard to a producer/director?

A Yes, it was.

Q And.

A And, he came and informed us.

Q He came to you?

A Yes.

Q Which producer/director was it?

A I would rather not state who that is; I don't see where that's germane.

MR. GORDON: I'll have to ask that he be directed to answer; I'll tell you why it's germane if you want. All right, for the record it's germane because, well it's germane because if Mr. Little is a supervisor and if he supervises or effectively recommends changes in the status of the producer/directors, then he would be a supervisor; and it would be germane to the hearing. So, I request that the witness be directed to name the producer/director.

THE WITNESS: Can I make a statement?

MR. BRODERICK: You said it was a producer/director?

MR. GORDON: Yes.

MR. BRODERICK: You're not satisfied with the fact that it was just a producer/director?

MR. GORDON: No.

MR. BRODERICK: You want to know the name?

MR. GORDON: Yes.

MR. BRODERICK: Tell him the name.

A Jim Herring.

Q (By Mr. Gordon) Did you take any action with regard to Mr. Herring?

A No, I don't believe any of us did, other than Dave Beddow, who talked to Mr. Herring, because he was new at the time; he hasn't been at the station that long; he's one of the less experienced producer/directors, and he was having a number of problems which is why I didn't want to bring it up, because Dave Beddow has talked to him.

Q You don't know what was said obviously?

A Well, I have an idea what Dave Beddow said; he said that, you know you're not quite demonstrating the leadership ability we want; you don't seem to be prepared; you know I hear that you weren't here on time, a couple of times; and that was it.

Q Who supervises the art department?

A That is a tough question to answer in that I would say it would have to be in relation to some specific example; if for instance, let's just say for example that it's one of our public affairs shows, the producer/director needs some visuals ordered, he will go in and tell them he needs these visuals. Now if it relates to a flow chart demonstration by the general manager, the general manager would go and request. They are a service organization.

Q All right, I just want to take this step-by-step. How many people are employed in the art department?

A Seven people.

Q Does that include the art director?

A Yeah, well the art director, at this station they're all members of Local 804; and there's is an art director, and he isn't an art director in that way.

Q Is he included in these seven people?

A Yes.

Q Who hires people for the art department?

A Who hires them.

Q Yes.

A This would vary from case to case; since I've been at the station, we've hired a couple of people; one of whom, I found; and naturally I would want the director director -- one of the reasons why we don't have a pure art director at the station is because the national art director for the company is on the premises and really performs in that capacity; he is not a member of the union. So, in the case where I found out myself or through somebody else somebody who could perhaps fill the job in the art department, I would go to him and say, ghee, he or she seems to be good and they've done this or that and I would hire that person; what do you think, because that's his specialized area.

Q How many people have you said that about since you've been at the station to the national art director?

A I think just a couple.

Q Has anyone else to your knowledge ever recommended someone else to be hired in the art department since you've been at the station?

A Let me just clarify one thing; I said a couple, and it's either one or two because I can remember only one right now; and in that one case it was a very minimal function; it was an art department secretary, but the person had to have familiarisation with art.

Q Did you recommend that she be employed?

A I recommended that she be employed. She was recommended to me by an employee of the station who was not a producer/director.

Q Who is the employee?

A The employee is a salesman at the station.

Q Has Mr. Little ever recommended that anybody ever be hired for the art department to your knowledge?

A Not since I've been there, because there haven't been many openings; it's not a high-turnover department.

Q You say there are seven people in the art department. Who is their supervisor, who tells them what time to come to work and what time to go home?

A The production manager; he schedules the art department, and he would work in concert with the art director, and the national art director; you know it is

a group consideration. O.K., It's not an arbitrary thing, but Ron Little as production manager will participate in that. I don't know if I can say any more than that.

Q Does the art department function twenty-four hours a day?

A No.

Q Does it have set hours?

A Yes.

Q Who set the hours?

A All members of 804 have set hours.

Q Who sets the hours?

A Who sets the hours.

Q Yes.

A I guess I would say those people, I would imagine.

Q Which people?

A The art director, the national art director, and the production manager.

Q And, who would communicate the fact to an art department employee that his hours were nine to five for example?

A Who would communicate it?

Q Yes.

A Well, there's a schedule.

Q Who makes the schedule?

A Ken Little makes up the schedules.

Q He plays no part in determining what hours they will work?

A I never said he plays no part; I said he is one of three people who make the final determination. Now if for instance we have a certain person who has a specialized skill that we need to cover certain shows like the late news shows, someone that the producer/director and people in the news department can work with well, they may request to Dave Beddow or myself that they be on late, which might necessitate a change in the schedule [illegible] will tell Little to do.

Q Has that ever happened?

A Yes.

Q When?

A When.

Q Right.

A It's happened a few times since I've been at the station; I can't remember exactly; I make a hundred decisions a day.

Q Now the people in the art department are members of Local 804; is that correct?

A Yes, they are.

Q And, if they work set hours and if they work past those hours, they get overtime pay, I would assume?

A Right.

Q Who can request that they work overtime, who can request an individual employee that he work overtime?

A It would vary from case to case. Let me give you an example. If there's a late breaking story that would necessitate art work, the producer/director can request it, someone from the news department...

Q I didn't say who can request it; I said who can tell the employee you're to work overtime tonight?

A It would vary from case to case.

Q Could it be the producer/director?

A Yes, it could.

Q Can you give me one example where a producer/director has ever told an 804 person that he must work overtime?

A Can I give you a specific example.

Q Yes, an example.

A I would have to believe that those occasions have arisen; for instance, with some of the late news shows...

Q I'm not asking you what you would have to believe. Can you tell me has it ever happened?

A I don't know if it happened.

Q All right. Isn't it true that an 804, an employee represented by Local 804 has absolutely no obligation to listen to a producer/director, that the

producer/director can give him absolutely no orders other than stage directions when he's physically working?

A Can you restate that question.

Q I'll get back to it. You talked about the Mike Douglas Show. Who is the director on that program?

A A gentleman by the name of Frank Ryan.

Q Is Mr. Ryan a member of the Directors Guild, do you know?

A Yes, he is. He does not work for the station; he works for the production company which is a totally different set up than the owned and operated section of Westhinghouse Broadcasting.

Q Let's talk a little bit at some length about meetings. You said when you first came to the station that you held a meeting, more than one meeting with the producer/directors; at which time you talked about their status as members of management. When was that meeting?

A That meeting was before I actually officially took over at the station; I just found out that I had the job; I came into Philadelphia to visit the station one day and returned that night; and I had one meeting with a group of meeting. That meeting was with the production people.

Q Who was at that meeting?

A Well, the producer/directors, the assistant program manager, the public affairs director, I don't recall if the production manager was there, and possibly a production assistant or two; you know that at that time, there had been some changes; and I didn't know all the people naturally.

Q And, what did you tell them if you remember?

A Well, to the best of my recollection, I made two points; the first and key point was that I viewed the people that were in that room as the key people at the station, the final touch between, the link so to speak between the station and the viewers that we serve and that in view of that that I thought they might have happier days than they had had prior to my coming; that they were going to have more of a say in what was going on at the station; that I was in addition to giving them more responsibility and latitude, I would expect them to be more accountable for things than they possibly had been doing. And, the second major area that I tried to cover with them, it was a brief meeting, you know it was maybe twenty minutes; I covered the fact of how my working style was, that I have an open door policy and I like to meet with people on an individual basis as opposed to having you know a regular meeting where

people feel obligated to show up and make statements; since they are key people and have a regular schedule, I'm not going to infringe upon their time.

Q You said they were key people, and you said that you made it clear to them that they were part of the management group. Can you tell me specifically what you said?

A Well, I did not say I made it clear to them that they were part of the management group.

Q The question was asked, as the record shows, did you make it clear to them that producer/directors are part of the management group and your answer was yes.

A Yeah, but you didn't ask me that right now.

Q You...

A Because you know I'm trying to recall what I said fifteen months ago to the best of my ability, and I'm a little bit tired now and I don't recall, I do not recall necessarily making the statement at that single meeting that they are all part of management. I made the point that they were the key people at the station in my opinion.

Q All right, now you don't recall making the statement at that meeting. Have there been other meetings like that where you discussed your style or the fact that they were key people?

A Yes, yes.

Q Did you ever elaborate to them what you meant by saying they were key people?

A I don't know what you mean by elaborate; you see individually I talked to each one of those people a number of times when I first get to the station and...

Q I'm not talking about individual meetings.

A O.K. And, in those meetings and in the group meetings, I made the statement a number of times that they were the key people and that they were part of the management team and that they were supervisors and that they were the final touch in the station and in many contexts they control what goes out on the air.

Q You did call it to their attention that they are supervisors?

A Yes, and I do recall saying that they are members of management at the meetings.

Q That doesn't include, I assume, the production assistants?

A No, because the production assistants, you know the same cast of characters were not necessarily at every meeting. Some meetings were program department meetings; some of them were just the production area; some meetings were just exclusively the producer/ directors with Dave Beddow and myself.

Q Now you've been there fourteen months, and is it your testimony that you've had somewhere between twelve and fifteen meetings attended by the producer/directors?

A Yes.

Q In the last twelve months how many meetings have you had?

A I would say eight to ten.

Q Let me limit it very specifically; since last August how many meetings have you had?

A Since last August.

Q Right.

A I can't give you an exact number. I can check my records because I have a record of every meeting we have had.

Q Do you have that with you?

A No, I don't; but if you want me to give you an estimate, I'd be glad to do so.

Q Yes, I'd like an estimate; you've had eight to ten in the last twelve months?

A We're in June now. Naturally when I was first got there, since I was not familiar with the people and the people were not familiar with me, we might have had more group meetings than I've had, you know a number of individual and smaller group meetings since then. And, since the end of August, you're asking me; like from

September until now.

Q From September 1 until now.

A I would say five or six meetings.

Q I really don't want to badger you, but I'm going to put a witness on in rebuttal who is going to testify, several witnesses, that they've only attended three meetings. Is it possible? I'm not saying, I'm not accusing you of telling something that's not true. Is it possible that your recollection is faulty?

A It sure sounds like you are. No, it's not possible.

Q There were more than three meetings?

A There most certainly were more than three meetings; and you know what is going to happen if we decide to pursue that tact, which you know is fine with me, you know you may discover that those people have all forgotten certain meetings or look at things that I may consider a meeting that they wouldn't consider a meeting or vice a versa.

Q I'm sure that's just what we would discover. You said that when you see someone, two people discussing something, that's a meeting?

A Yes, but that's not what I'm referring to. You're question was how many meetings did the producer/ directors as a group have. And, let me add one thing

here, O.K., because of schedules we're always on the air and frequently it's impossible for a producer/director or even two producer/directors to be there; they may be on their days off and it may not be that important to call them in; they may be working in the studio or working someplace, at you know a remote location; so, it's frequently impossible even in a mass meeting to have all the producer/directors there. So, you have as many as possible.

Q You talked some about day-to-day meetings, and in day-to-day meetings you include instances where yourself or Mr. Beddow talks to one other person; is that correct?

A Did I include those types in there.

Q Yes.

A Yes, I did.

Q How many meetings, if you know, have -- have you ever had a meeting with all the producer/directors?

A Have I personnally had a meeting.

Q Yes, with all the producer/directors.

A With no one absent, is that what you're saying?

Q Yes.

A Yes, I believe I have.

Q How frequently?

A Well, I've outlined for you a number of

meetings, to the best of my ability, that I can recall over these different time periods.

Q Can you recall the last meeting when all the producer/directors were present?

A Sure.

Q When was that?

A That meeting was approximately two months ago.

Q Who was present at that meeting aside from yourself and the producer/directors?

A I believe Dave Beddow was there, in fact, I'm sure he was there. That meeting was different from the other meetings for a specific reason.

Q Mr. Little was not there?

A I honestly don't recall, but it seems that he wasn't there.

Q Could you tell the Hearing Officer the purpose of that meeting?

A Well, since this group of people is the key group of people, and we have talked to them as a group and individually; I had heard a rumor that they were considering as a group attempting to become unionized through DGA. I think that any/and all of the producer/directors would agree that I'm a relatively outspoken guy; and rather than to use insidious or deceptive practices to get information, I just asked to call a

meeting; I said, hey, I hear you guys are considering this, and the reason why you are considering it must be that you're unhappy about some of the conditions at the station; let's talk about it; I'm not trying to influence you; I mean Im just trying to find out what the information is and maybe you can bring things to my attention that I don't know about. And, we laid the cards on the table; I was satisfied with the meeting; everybody there opened up, and we met in our conference room over lunch and we talked, I don't know, an hour and a half roughly.

Q I know it was two months ago and it was a long conversation, but I'm going to have to explore it at some length?

MR. BRODERICK: All right, now I would object to exploring it at any length, because it has absolutely no relevance as to whether or not these people are supervisors, which is the issue in this case.

HEARING OFFICER: What's the relevancy, Mr. Gordon?

MR. GORDON: I think the testimony will reveal that the employees, the producer/directors were advised of the possibility that in the future they would be given more authority along the lines of supervisors, possibly conditioned upon their abandonement of their concerted activity; but I don't know; and that the

purpose of the testimony, the reason I seek to adduce it now is because if in fact they promised them certain authority, it might be reasonable to imply that they did not at that point have the authority.

MR. BRODERICK: Well, I have to renew my objection because it seems to me that it is not relevant to the issue; what is relevant to the particular issue before the Board is what in fact authority they do have and have exercised over the period of time.

HEARING OFFICER: Mr. Gordon, I'm going to sustain this objection for a number of reasons, not the least of which is the fact that we may be treading into an area of a potential unfair labor practice; and under those circumstances I sustain Mr. Broderick's objection.

MR. GORDON: The objection was to the whole line of questioning?

MR. BRODERICK: About the meeting.

HEARING OFFICER: This particular meeting.

MR. GORDON: Let me ask this then if I might.

Q (By Mr. Gordon) Was there anything else discussed at that meeting other than this business about the Directors Guild; did you discuss anything else?

MR. BRODERICK: I renew my objection; to that extent we know why the meeting was called, you know apparently according to Mr. Salzman. Now Mr. Gordon is

trying to get something indirectly that he can't get directly.

MR. GORDON: No, that's not correct; what I'm trying to do is if there were other things discussed, I have a right to question him about those. If the testimony is that there weren't other things discussed, then you can sustain the objection.

HEARING OFFICER: Well, let me see before you answer that, Mr. Salsman. Do you mean other than the potentialality of DGA representing the employees?

MR GORDON: Yes. I'll withdraw the question.

HEARING OFFICER: All right.

Q (By Mr. Gerdon) Do you ever meet with anyone to discuss labor relations policy?

A What do you mean by labor relations policy; that's not my job; that's part of the job of the business manager under the direction of the general manager who is under the direction of the corporate staff and legal counsel. You know decisions of that type involve a lot of people; so if you tell me exactly what you're talking about, I'll be glad to try to answer it.

Q I think you've already answered it. Have you ever been present at a meeting with the business manager and general manager where labor relation policies of any sort have been discussed?

A Do you mean by labor relations policies, you know what we're going to decide to do while we're negotiating a contract, like with an I.A.T.S.E. local.

Q Yes, we'll start with that kind of a meeting; have you ever been at that type of a meeting?

A Yes, I have.

Q Were the producer/directors there?

A No. Neither was my assistant.

Q Have you ever been at a meeting where manpower utilization was discussed, how best to use the personnel at the station, whether to double the staff or whether to cut the staff in half?

A I have been at meetings, yes, I have been at a few meetings of that type related to budgetary problems and whether if we had to operate with less dollars we could cut back on people.

Q Were any of the producer/directors at that meeting?

A No producer/directors at those meetings.

Q Have you ever been at meetings, you testified that part of the purposes of a television station is to serve the public interests. Have there been meetings at which you were present where that kind of problem was discussed -- how best of serve the public interests?

A It's not necessarily a problem, but, yes, of

course, we have discussed that.

Q Were the producer/directors at those meetings?

A In that broad category I've had dozens and dozens if not hundreds of meetings since I've been at the station, and at a great number of them there were producer/directors.

Q All right, then let me try to break it down somewhat. Have you ever been at a meeting like that where the public interest function of the station was discussed at which you and the general manager were present?

A Yes.

Q Was the business manager present?

A Probably he wasn't present.

Q Was there ever a meeting or how many meetings have been held at which you and the general manager of the station have been present which also included the producer/directors?

A At our station the general manager deals only with the five department heads, of which I am one; he never deals with anybody else, including the assistant program manager; he, therefore, in all but a very few instances will never be in a meeting with me and my assistant director, my producer/directors, my public affairs director, my production manager, and our

news director. That's not the way our station works. With the elder general manager up until nine months ago, it was a different story.

Q Before we get back to your direct testimony per se, let me ask you a few things that you touched upon. Take for example the 11:00 o'clock news; I guess my first question is who decides that the 11:00 o'clock news is going to be on at 11:00 o'clock at night?

A Who decides that.

Q Yes.

A I'm directly responsible for that decision. Obviously we had an 11:00 o'clock news before I got to the station, and you know it is the convention within the industry.

Q Have you ever discussed at a meeting at which other people were present the possibility of changing it from 11:00 until some other time?

A No, I have never discussed changing the time of the 11:00 o'clock news since I've been at KWY that I can recall.

Q But, that is your area of responsibility?

A It's a program; I'm responsible for all programs.

Q If you wanted to change it to 10:30, do you have that authority?

A Unilaterally, no.

Q With whom would you have to consult?
A Who would I have to consult with.
Q Yes.
A The only person that I would have to consult with is my boss, the general manager, who then has his own responsibilities and who he has to consult with. It would be a major policy decision and one which I would want to discuss with a number of people in my department.
Q I understand that, but I'm not talking about asking for advice or suggestions; I'm saying, who...
A The next person above me in the station is the general manager; so it's incumbent upon me to talk to him.
Q I saw the 11:00 o'clock news one day on KWY and there were three newsmen; who hires them, who decides?
A You mean you saw three people on the air.
Q Right.
A Who hires them.
Q Yes.
A That is a part of my set of responsibilities.
Q Who has the authority to fire them?
A I have the authority to fire them; however, again that is not a unilateral thing; it is something where I might have to discuss that with the general manager,

possibly other people.

Q Could you fire a cameraman, or would you have to discuss that with the general manager?

A I discuss everything with the general manager because it relates, when you fire someone who is a member of a union, it involves considerations about that union that possibly legal people or you know labor or industrial relations people would think of; I'm not hired to be a lawyer and an industrial relations expert; I'm a programmer.

Q I understand. Well, then I don't mean to ask you for a legal conclusion, but I must ask a general question. Who has the authority to fire one of the talents on the news program?

A Well, first of all you know there are specific reasons why one can or cannot fire somebody.

Q I'm asking for the reason.

A O.K., so what I'm saying is that it may be very difficult for me to, if I decide that I want to fire somebody and discussed it with the general manager and discussed it with other people and we all agreed that he was a bad employee and we wanted to fire him, it may not be possible to fire him.

Q Let's go at it the other way; does your assistant, Mr. Beddow, have the authority to fire Custer, is that

his last name, on the weather?

A Yes, he's the weatherman, Bill Custer, right.

Q Does Mr. Beddow have the authority on his own discretion if he wants to fire him?

A No, no, he doesn't.

Q Do you?

A Do I.

Q Yes.

A Yes, I have that responsibility; and as I say I would do that in concert with the general manager as opposed to just you know seeing something I don't like and just saying you're fired.

Q Who picked the talent who appear on the 11:00 o'clock news as opposed to all the other talent in Philadelphia?

A Several people.

Q Including whom?

A Oh, including myself, Dave Beddow, and probably the news director; in fact if you're talking about news people, certainly the news director.

Q Not the producer/directors?

A Not the producer/directors, not any of the other people, just the people I stated.

Q For example you say there are three cameramen on the news; who decides who the three cameramen will be?

A Who decides it or who schedules them.

Q Who decides who it will be?

A I would say that is a decision made by a number of people.

Q Who are the people?

A Well, it would be myself, Dave Beddow, and any other number of people; if we have a stage manager who is not capable because someone tells us he cannot do something and we agree and we can schedule him someplace else, we will.

Q That's not what I'm talking about. Now decides that Cameraman X, Cameraman Y and Cameraman Z will be on the 11:00 o'clock news?

A Well, we just pick the people; they don't necessarily have to be a cameraman; they can also do other functions at the discretion of the director.

Q There is one individual with his eye in the eyepiece of a camera; there are three of those people on the 11:00 o'clock news?

A Right.

Q Who determines that those three people will be standing on that stage?

A Myself and my assistant, Dave Beddow.

Q What about the man some witnesses have called a producer and you have called a news editor; who determines

that he will be the news editor or the producer of that program?

A The news director, you know under the guidance or with the consent of myself and my assistant.

Q In the control room there is an audio man; who determines that he will be the audio man on that program?

A Well, the audio man is within the engineering department; so the engineering department is a service department; they serve programming; as long as we would O.K. the guy and we didn't have any problem, that person would be scheduled by a member of the engineering department, management.

Q On the news program, is there a script?

A Yes, there is.

Q Who writes the script?

A A number of people in the news department.

Q For example?

A For example writers, desk assistants, the editors, the talent.

Q Who approves the script; is there anyone who has final approval of the script?

A As far as what, the content of the script.

Q Yes, the words in the script?

A The person in charge of that show in the news

department, the news editor for that show.

Q And, on a given day there may be a variety of important news stories; who determines among the variety of news stories as to which ones will be broadcast on the 11:00 o'clock news?

A Well, several people, I would think; of course, the editor on the show, any assistants that he has, perhaps editors on other shows; since the 11:00 is basically a compilation of what has happened in that day, he'd want to talk to those people; he might want to talk to the news director or the assistant news director or the assignment editor; he might want to talk to other people.

Q Would he want to talk to the producer/director?

A He could.

Q Yes, he can talk to him; but does the producer/director have any authority to determine ultimately which news stories will go on the program?

A Do you mean making up the format.

Q Yes.

A No, but if you are on a show and if he decides for some reason not to air something, it is not going to go on the air.

Q Has it ever happened in the fourteen months you've been there that the news editor has said, I want this

piece and this piece and this piece to go on the air; and the producer/director says I don't want that to go on the air and it doesn't go on the air; has that ever happened?

A I'm not sure.

Q Does the producer/director in your opinion have any authority to spontaneously determine what goes out on the air; if the news editor wants something to go out, does the producer director have any authority to say no?

A There are a number of things that go out on the air on the 11:00 o'clock news show that are joint decisions and there are a number of them that are singular decisions. Some of those singular decisions are made by the producer/director; he'll decide what the shot is of the anchorman, he'll decide how they shoot a visual; he'll decide those things. Now I don't know, since I am not in the control room, whether certain news editors would disagree with the shot; I would imagine at times they would; they might say, hey, I think you're shooting it too loose; and according to who the director will be, the director might say well, no, that's the shot I want because if you shoot looser it will be the same as that other shot; so we're going to go with that. And, I imagine in some cases the

producer/director would prevail in that example. And, I imagine there are other cases possibly where the news editor would prevail.

Q On that kind of an example, have you ever heard of one time when the producer/director prevailed over the news editor?

A Over what.

Q With regard to what kind of shot to take?

A Most definitely.

Q When?

A What do you mean by when; do you mean a specific day.

Q Yes, I mean the testimony has been on direct examination...

A We've had chroma-key visuals that we're not acceptable for technical reasons or for other reasons; for instance, there wasn't enough gray scale variance in it and this was not noticed by the news editor who is not an expert in that area; he looks at a color slide and he sees that it's in color. The producer/director has to see them in black and white as well because fifty percent of the sets that are used are black and white. There are specific cases that I can recall of slides and visual cards where they were in the show and the producer/director took them out of the

show.

Q I understand that's quite possible for some artistic reason; but using your example, have you ever heard of an instance where the news editor said I want you to leave it in, I don't care if it's bad quality...?

A Do you mean a slide or a picture.

Q Whatever.

A Yes, I think I can recall at least a couple of incidents where that occurred and where the producer/director prevailed.

Q Can you tell me when the news editor said to leave it in and the producer/director said I'm leaving it out?

A Well, when you say the news editor has it in the show, O.K., and you come up and you're on the air, it's a highly pressurized situation; you make instantaneous decisions; the director looks up in the preview monitor and he says, hey, wait a second, I can't put that slide on the air, you misspelled the guy's name or I can't even see it in black and white because all the monitors are black and white; I can't put that up on the air; and the news editor might say -- and I can remember a couple of cases where that has occurred because it came back to me afterwards -- O.K., leave it out. So, in that case they prevail. So, you know it isn't a thing where anybody has the time to sit down and argue.

You know you're in this situation, and sometimes the producer/director may decide, well, hell, I don't like it; I'm still going to put it on the air because we don't have time to argue about it. You've got one second to make a decision.

Q That still doesn't answer my question, though.

A I think I have.

Q Using your example and let's say the news editor said, O.K., take it out.

A Right.

Q Now suppose he says, I don't care, leave it in?

A Well, supposing doesn't do me any good; I'm not in the control room.

Q Have you ever heard of an example where he says leave it in and the producer/director took it out?

A Have I heard of a specific example; do you mean have they come to me after the show, no, I don't recall any examples.

Q Let's get away for the moment from the artistic prdlems and technical problems about gray scales. Let me ask you this; of the news articles, the news stories that are broadcast, who determines which news stories will be aired?

A The news department generally determines that.

Q How much responsibility does the producer/director

have -- I'm going to call him director, because I'm getting confused; I'm going to call the people who are seeking to be represented by the Directors Guild, I'm going to call them directors; and the people who have already been called news editors, who have already been called producers, I'll call them news editors.

A I would disagree with that, so you know I'm not going to follow you that way, O.K.; although it may be confusing.

Q How much determination does a producer/director have in the specific news stories which are chosen for the 11:00 o'clock news?

A I think I just said that generally the news department will make that determination.

Q Does the producer/director have any authority to make determinations along those lines?

A Which stories will be covered or which ones will be put in.

Q Yes.

A No.

Q Suppose for example that on the 11:00 o'clock news program, it is running late and a story has to be cut out; who determines which story will be removed from the script; let's say a story is all on one page in the script; who determines that that page is going to

be pulled?

A The news editor would normally do that; you know there could be other people, because let me explain something; the news editor when he's in the control room has one major function and that is time, because the show has got to move on time; he has got to get that show off on time; so he's following time, and he may say pull that script page. Now all of these decisions that are made by the news department as to what stories may be included in the format are ultimately under the control and supervision of the producer/director who is calling the shots; if he makes a mistakes or for some reason decides not to do it, then it's not going to go onto the air; whatever the news department might have determined, it's just too bad. If he decides to press the wrong button or makes a mistake, that's wrong. And, incidently that was part of the problem and why we made some changes at the station including hiring Dick Pyle.

Q I understand that; you like Mr. Pyle; he's a good employee. But, that doesn't respond to the question that I asked, I don't think, as to who has the responsibility for doing these things; let me approach it from a different angle. Suppose some political leader right in the middle of the 11:00 o'clock news, it's

quarter after 11:00 and the news is being broadcast, someone is assassinated, it comes over the wire services, someone in the newsroom rips it off and runs it into the control room; who does he give it to; does he give it to the producer/director?

A If there's a news editor there, I would assume he would give it to the news editor; for among other reasons, the director is directing the show; he's got like nine people under his wing; he doesn't have time to read something.

Q Other than emergencies, is there ever an instance, can you tell me an instance where the news editor is not in the control room during the broadcast of the show?

A The news editor is assigned to be in the control room at all times, and I would say most certainly he's out of the control room on many occasions because he may be looking for a talent or a script may be out of order; he may want to run in and talk to a writer, so sure he's out of it; he runs out sometimes during the commercial breaks; he's not there necessarily every second that the show is on the air, but he's generally there.

Q If someone comes in with a late-breaking news story and obviously the time for the program is already

filled out in the script, who determines which pieces to pull and at which point to insert the news bulletin; does the producer/director determine that ever?

A First of all you're talking about something that doesn't occur that frequently. Now you're talking about news that moves on the wire during the 11:00 o'clock news and being put on the news show; I would say that generally in most cases that I can recall, if not all, that the decision is made by the news editor.

Q All right, let me rephrase it; does the producer/director have authority at anytime to remove news stories from the script or to insert other news stories into the script? Does he have that authority.

A Could you restate it.

Q Does the producer/director have the authority to remove stories from the script because he determines for one reason or another he doesn't want them broadcast?

A If there is a case if, he can, he has that option; of course, it doesn't regularly happen; you've got a department...

Q Tell me once when it has happened?

A Tell you once when it happened.

Q Tell me once when it happened?

A I am not sure of how many times it has happened.

Q Are you sure that it ever happened?

A Do you mean since I've been at the station.

Q Yes.

A I'm not sure if it has happened.

Q Have you read the collective bargaining agreements in effect between AFTRA and KWY; are you familiar with them?

A The union contracts.

Q Yes.

A Yes, I'm familiar with them.

Q Does any one of those contracts cover the news editors, the men or women in the control room while the show is broadcast, the news editors; are they covered by the AFTRA contract?

A Yes, they are. An incorrect statement was made last week in the testimony by one of the witnesses that it states in the contract that the news producers have ultimate responsibility for news shows, ultimate and/or complete responsibility; there is no such statement in that contract. They're all referred to as newsmen generally.

Q Have other employees ever been told by you or anyone else under your control that in fact the news editors do have over-all responsibility for a program?

A At one of the meetings in the last six months where

producer/directors were present, we were discussing news because that is the major area in any television station; one of the producer/directors said he was having difficulty relating to the news editor, I forget which show it was, one of the regular shows; he said now, he says, that he's responsible for all this and I thought I was responsible for all that; what is the situation, and that was discussed.

Q Did someone advise the producer/director with regard to what the news editor was responsible for?

A We said that the producer/director is responsible...

Q That's not what I asked; I asked about the news editor; what is the news editor responsible for?

A The news editor is responsible for...

Q I'm sorry; I don't mean to get excited, but sometimes you don't answer my question.

A You didn't allow me to complete my statement, O.K.

Q Let me withdraw the question.

A You know you want me to make half of a statement; I want to ask it in the context that I made it.

Q All right, I'll rephrase the question. What are the duties of the news editor?

A The news editor has various duties that would

include performance as an on-air person, possibly a writer, possibly ripping wire copy and rewriting that, possibly discussing with the talent on the show certain things; it would include the responsibility to discuss with the producer/director in detail the show and all the elements in that show. I think that would cover it.

Q Does the news editor have the responsibility for writing the script and/or the authority for writing the script?

A Yes, I would say so.

Q Do producer/directors have the authority to hire or fire anyone?

A To hire or fire anyone unilaterally, if they don't like anybody, they go out on the floor and say you're fired.

Q Yes.

A No.

Q Do they have the authority unilaterally of their own accord to suspend or to lay off or to reward or discipline anyone?

A The only reason I'm thinking is on the last one, discipline; I would have to say no in generall to those four things.

Q You testified that -- let's go back to your testimony; you testified in one instance that

producer/directors have the right to assign overtime. Now I'm sure you didn't mean assign overtime.

A If I said assigned...

Q You did say assign.

A I think I said approve.

Q The producer/directors have the authority to assign overtime.

A Under certain circumstances, yes.

Q What are those circumstances?

A It would generally be other than those circumstances which might have been anticipated and, therefore, discussed in advance with quite possibly Dave Beddow, emergency circumstances.

Q Can you think of any one instance where a producer/director has assigned a member of Local 804 to work overtime; when I say assign, I mean told him you're going to work overtime? Has that ever happened to the best of your knowledge?

A Yes.

Q When?

A In cases of 11:00 o'clock news when they were late and you know people wanted to know if they were getting off a shift, let's say at 11:45, are they supposed to stick around for this and they'll ask the producer/director; at least, they should; or they

wouldn't ask and they would just assume they will continue.

Q Well...

A There are also other sessions that I can recall, production sessions that were on the day shift where for some reason a production was going slowly; I can recall a number of cases on a show that is no longer on the station, the Bob McLean Show, where they were taping in the afternoon when the producer/director who was in charge of that show, authorized overtime; in fact, he did it too much, and there was a problem.

Q Was he functioning as a producer or a director?

A Who.

Q The person that you are talking about who assigned too much overtime?

A He was a producer/director on the staff; and he was in charge of that show.

Q O.K. Someone obviously has to determine, some policy has to be made as to who an employee will go to to find out if he's authorized to work overtime. Now you're testifying that the producer/director, let's take Mr. Pyle for example; does Mr. Pyle, let's take it a step at a time; in fact, does Mr. Pyle have the authority to require cameramen to work overtime ever?

A Yes, under the circumstances that I have outlined.

A Has he ever been told that he has that authority?
A I would have to believe so, most certainly.
Q By you?
A By Dave Beddow.
Q And, who sets the policy that allows a producer/director to have the authority to assign overtime?
A That policy has been a long-standing policy.
Q Who can change that policy?
A I could change the policy.
Q Now you testified that we're not a factory type thing; you sat in the room while four producer/directors testified that they don't have the authority to assign overtime.
A Right.
Q Now it is at least, if not a fact, a common belief that they don't have the authority to assign overtime. Are you saying now for the record that they have the authority to assign overtime?
A How many times do you want me to repeat myself. I said under special circumstances that I have outlined they do have authority to assign overtime, and there have been a number of examples through the years; and it has happened; it's not a regular thing.
Q I'd like one example; I'd like the name of a

producer/director who authorized overtime and the name of the employee who worked overtime?

A Henry Briggs, a former producer/director at the station who produced the Bob McLean Show; he authorized overtime that was not scheduled in afternoon tape sessions in the fall show.

Q The fall show?

A The fall of this season, I mean, the fall of 1972.

Q What kind of a program was that?

A The program was a talk, variety, public affairs daily hour show. You know I would just like to clarify a point that I made on this assigning of overtime because you keep asking questions. Dave Beddow is the direct supervisor of the producer/directors; I have other functions; if I knew every single thing and watched every single thing, I wouldn't need him; so you know you're asking me to cite examples at this point, and I'm sure there are many examples, specific examples that could be cited, you know, that I'm not aware of at this moment that I can't recall.

MR. BRODERICK: Could we take a five minute recess.

HEARING OFFICER: I'm considering breaking for lunch, Mr. Broderick; it's now almost 12:30; this witness

has been on the witness stand since, substantially since about quarter of 10:00 this morning, except for a few recesses; and I know he's very weary because as you described before the hearing began, the people at the station have been keeping the operation going despite the fact that there is a strike in progress by I.A.T.S.E.

Under the circumstances I am going to break for lunch and resume at 1:30 with this witness. Everyone will have a chance to be refreshed.

(Whereupon, at 12:30 noon the hearing in the above matter was recessed, to reconvene at 1:30 o'clock, p.m., the same day.)

AFTERNOON SESSION

1:30 o'clock, p.m.

HEARING OFFICER GRAHAM: On the record.

We are resuming with the cross examination of Mr. Salzman.

Whereupon,

DAVID E. SALZMAN

resumed the witness stand and having been previousl sworn was examined and testified as follows:

CROSS EXAMINATION (Continued)

Q (By Mr. Gordon) Mr. Salzman, are you familiar with a memo sent by Ron Little sometime ago advising employees that only he or the executive producer could approve overtime or authorize overtime; have you seen such a memo?

A I don't recall seeing such a memo.

Q Who does Mr. Little supervise?

A Who does he supervise; I would say that he supervises the production unit; here's the one clear area where he supervises people, but again even in that case, for instance when you are on a show, he is not supervising the people; so you know, it's hard to say. Among the people that he supervises, it would be the production unit and the art department.

Q Suppose a producer/director is required to work a

sixth day, who calls him and asks him to come in for the sixth day?

A Well, that assignment would be made by Dave Beddow; I imagine that given whatever the circumstance would be that either Beddow or Little would call; generally Little would call the people, because that's the practice.

Q Now has it ever happened that an employee has been sent a letter advising him that he had been late and was going to be suspended or advising him that certain days that he took off were unauthorized and he's not going to get paid for them?

A Do you mean a letter to any employee; you're not talking about the producer/directors?

Q No, any letter to any employee?

A I've seen one recently that Ron Little sent to a film editor; other than that I honestly am not sure if I can recall other cases.

Q Where on this chart is the film editor, or is he not on the chart; or is he not a part of the program department?

A Well, a film editor, in the film editor's category we have two basic types; we have what we call commercial film re-editors and news film editors; and they're all part of the program department. Now they are

all scheduled by Ron Little; the news film editors are scheduled according to the wishes of the news director; and the commercial film editors are scheduled in a configuration determined by Little and approved by Dave Beddow and myself.

Q All right, on this chart the editors?

A They'd be part of the production unit.

Q Who did Pyle replace; you said he replaced someone who had been on the 11:00 o'clock news?

A Jack Smith who was moved to the noon and 5:30 shows.

Q Was the 5:30 show always at 5:30?

A No. The noon show had been on the station for a long time; I would think it has been on the station for a good period, back to 1965 when Westinghouse resumed ownership of KWY; I'm not positive, but I think that's the case. The 5:30 is something new that I was involved with starting; it started in September; we used to have a news hour; so we maintained the same amount of news on the air but with a different style.

Q Who determines for example what a cameraman is going to be paid, the cameraman's salary?

A Which kind of a cameraman -- a film cameraman or a studio cameraman?

Q Studio cameraman.

A Well, there are contracts that stipulate according to you know how long he has been at the station, if he was brought in at this kind of a level and that kind of thing; according to the contract, the station management determines on a three-year basis.

Q Now who determines, I think you already told me who negotiates contracts; but who negotiates the contracts for a studio cameraman?

A Well, they are part of the 804 Local, so they don't sit down and have any separate negotiations; but there's a management bargaining committee.

Q Who is on that?

A Myself, the general manager, the business manager, the engineering manager; and that is it as far as the actual committee; now in many of the sessions, we've had Ron Little and Dave Beddow, and in just about all the sessions we've had the chief engineer as well. But, it doesn't necessarily make that much importance in that way because the committee is the people that I talked to you about and as department heads they can call in other people if they have to.

Q Is there anyone from the Westinghouse hierarchy there when you bargain?

A Do you mean from the corporate offices.

Q Yes, who does the actual bargaining, the chief

spokesman?

A I wouldn't say that there really is one; I would say it is the committee as a whole; now there have been occasions when a certain individual who was a lawyer and is involved in industrial relations has been on the premises basically as an observer; he's not part of the bargaining team; he'll be there, and if we want to consult with him, we can ask him if this is O.K.; he's in on a minority of the sessions.

Q Does the bargaining committee meet to determine amongst itself what they're going to offer and what they can accept with regard to the salaries of employees?

A In relation to 804?

Q Yes, let's assume 804 makes an offer.

A Yeah, I mean you're still talking about 804.

Q Yes.

A Yeah, we have many planning sessions.

Q How do you determine how the directors are paid, the salary that a producer/director is going to get?

A How do we determine their salaries; we determine the salaries by considering a number of things, such as experience, the prior earning level of the person coming in, what the specialty may be, what the past precedent might be in the position that he's filling; so

it is a fairly wide system of criteria.

Q You play a part in determining their salary?

A Sure, I do; yes, I do.

Q And, you play a part in the management bargaining committee. What is the highest paid cameraman paid at the station, if you know, the highest and the lowest?

A I don't know exactly.

Q Do you know roughly?

A Well, there are different levels in the scale that cameramen can make; the top scale base salary for a cameramen, and most of our cameramen are top scale, I don't know about sixty percent or eighty percent, I'm not sure, but we have few that aren't, they'd earn $16,100.00 a year give or take a few bucks.

Q And, that's straight?

A That's straight time.

Q And, do most of them make a substantial amount of overtime, or do you know what the average income last year for cameramen was?

A No, I don't know what the average was; and I would say that the cameramen, as I outlined earlier KWY is a pretty big production complex and it does the Mike Douglas Show among other things; and because of that the cameramen who are on the Mike Douglas Show would earn some overtime. I don't know, we may not

agree on what is substantial. I would say that the other cameramen would not in my opinion earn a substantial amount of overtime.

Q By substantial I mean $3,000.00 to $4,000.00 a year?

A Well, I would say that I would guess that the Douglas cameramen, most of them might earn $3,000.00 or $4,000.00 of overtime in a year; and I would say that most of the cameramen who don't work on the Douglas Show would not earn that much overtime.

Q What is the salary of the production manager?

A Is this something which I have to respond to. You know, because there's a working relationship with people, and I don't know why I would want to divulge my salary or other people's salaries including the producer/directors.

HEARING OFFICER: Mr. Broderick, do you have any comments on that?

MR. BRODERICK: Well, I think as Mr. Salsman indicates that is considered confidential, and I don't see what the relevancy of it is either.

HEARING OFFICER: One of the problems in determining supervisory status of an individual is to determine how they fit into the salary structure of the organization.

* * *

THE WITNESS: I'll be willing to give those, because they're in my department.

MR. BRODERICK: Well, give them.

THE WITNESS: The production manager, as I've explained before, is a unique position; he's on two payrolls; he's on the corporate payroll for the Mike Douglas Show and he's on the local payroll for our station; he makes a grand total of approximately $20,000.00; and of that $20,000.00, a portion of it is paid by the corporate staff for extra duties rendered on the Mike Douglas Show; now extra meaning that he works a normal week but part of what he does is on the Mike Douglas Show and for the production company; and I don't know if we pay him $12,000.00 or $17,000.00 at the station; but it's somewhere in that range. The public affairs director earns, well he just got a raise, he was earning approximately $13,000.00 a year; and I believe he's up to $14,000.00 a year now effective either May 15 or May 30th; it's an eight percent raise, and he was earning about $13,000.00 and he's up to about $14-or-maybe-$14,200.00.

MR. GORDON: O.K. My next question, if you know, what is the salary of the executive producer/assistant program manager?

* * *

THE WITNESS: He has a raise that I had put in for him; it has not come through yet.

MR. BRODERICK: Just what his present salary is.

HEARING OFFICER: Don't tell him what it is not.

THE WITNESS: His present salary is $18,400.00 or $450.00, in between there, between $18,400-and-$18,500.00.

Q (By Mr. Gordon) Is he presently earning that raise or is that raise coming?

A The raise is coming, and I'm sure it will be approved; and it will be an eight percent raise; and it is approved.

Q O.K. My next question obviously has to be what is your salary?

MR. BRODERICK: Well, we draw the line on that and I object to going any further on the salary levels; I think we've gone high enough. We have the direct supervisor of the producer/directors; we have what the public affairs manager gets; we have what Mr. Little gets. I think that ought to be sufficient for the record.

MR. GORDON: I disagree.

HEARING OFFICER: Objection sustained. I think we've got a sampling of salaries in and around the producer/directors to give an idea to the reader of the record what people earn.

MR. GORDON: Well, can I ask him the general question.

Q (By Mr. Gordon) Am I correct in assuming that your salary is higher than Mr. Beddow's?

MR. BRODERICK: We can stipulate that that's true.

HEARING OFFICER: All right, the stipulation is received.

Q (By Mr. Gordon) Now let's talk about fringe benefits. Is there something called Article 12; does that have any meaning to you?

A No.

Q You testified that you participate in a variety of fringe benefits including the Westhinghouse Management Disability Plan?

A I don't remember testifying that I participated in a variety of fringe benefits.

Q Is it available to you?

A Fringe benefits. There are management benefits which are extended to me and other members of management including the producer/directors; they include medical, life insurance, you know up to a certain degree and then you have the option to buy more coverage, you can participate in a stock and/or bond plan, there's management disability, some sort of a

pension plan. Personally I'm not a big guy on benefits; so you know I don't utilize a lot of the benefits and maybe I should.

Q Do you receive a check from Westhinghouse or from some subdivision of Westhinghouse on a regular yearly or otherwise regular basis which represents some kind of distribution of profits or profit sharing arrangement, a plan to which you do not contribute any money?

A That's get to be a hard question for me to answer, and I'll tell you why; first of all I've only been with the company for two years; it's hard for me to say, you know based upon experience whether I have received bonuses; and while I have received a bonus, I have no knowledge if it's related to profits, other than the fact that I have been told that it wasn't. Now maybe somebody misinformed me. So, I did receive a bonus; and from the knowledge that I have it has absolutely no correlation with profits because it was at a station that went through a pretty terrible year; that's why.

Q Did you receive it from the station or from Westinghouse?

A Do you mean who is the check from.

Q Yes.

A I don't even remember; I remember, you know I don't know who signed the check. I don't know if it was a local check or a corporate check.

Q How long ago was this?

A This was in February.

Q This February?

A Right.

Q And, you were employed at KWY?

A Right.

Q Who handed you the check?

A The general manager.

Q Did he say anything to you when he handed it to you?

A He said spend it.

Q Did he tell you what it was for or why he was giving you a check?

A Why he was giving me the check.

Q Yes.

A He just said it was in appreciation for, you know what I had done.

Q Do you know if any of the producer/directors have ever received a check like that in appreciation for what they've done or a bonus, if you want to call it that?

A Well, I have been in the company for only two

years; you're asking a pretty broad question. For the two years that I've been in the company, I don't know of producer/directors receiving a bonus; I don't know of most other people in management receiving bonuses; I know in specific cases of many people in management who have never received a bonus in the company, or within the two years that I have been there.

Q Well, at the same time that you got this check from the general manager, do you know whether any other people in the company got checks?

A I know other people got bonuses, but I don't know who they all are.

Q Do you know if Mr. Beddow received a bonus?

A Mr. Beddow. First of all we don't have a bonus system; you leading me down the line with bonus, we don't have a bonus system. I don't know, you know what it is called; and I'm not trying to be, there's no name for it; there's no bonus plan.

Q All right, I'll call it a profit sharing plan?

MR. BRODERICK: There is no profit sharing plan.

A Well, no, there isn't; because if there was, I would love to participate in it.

Q (By Mr. Gordon) Well, let me rephrase the question; you told me in February you got a check; I guess for the record we ought to let the record know

what we're talking about. How much was the check for?

MR. BRODERICK: Now, wait a minute.

THE WITNESS: No way.

MR. BRODERICK: I don't think that has any relevance at all whether it was for a dollar or fifteen hundred dollars.

MR. GORDON: It certainly does have relevance; if he got a check for $5,000.00 and the producer/directors didn't, I think that goes heavily towards the issue.

MR. BRODERICK: I think it's completely irrelevant.

HEARING OFFICER: Let me ask a question. Did the producer/directors receive any kind of bonus?

THE WITNESS: No, I have already stated that they have not.

HEARING OFFICER: I don't think we ought to pursue that line of questioning as to the amount of the check. Objection sustained.

THE WITNESS: I would just like to point out that there are a number of people in management whom I would consider to be in management who are department heads, subdepartment heads and supervisors who have not ever received a bonus since I've been in the company; you know that I know.

Q (By Mr. Gordon) You testified, I believe, that there have been meetings at which evaluations of the performance of employees were made; is that correct?

A Yes.

Q I'm not sure whether you testified whether producer/directors attended those meetings, but I ask you?

A Most definitely.

Q When was the last meeting of that nature held?

A To discuss talent or just any employee.

Q Any employee.

A I would say within the last several weeks.

Q Approximately when, I'm not asking for the specific day?

A You know I can't even remember where I was yesterday; I'm sorry. I don't remember the specific date, not at all.

Q Was Mr. Pyle present?

A There have been a number of such meetings in the last few weeks where, with different producer/directors where as a matter of normal course we've discussed people who are in probationary periods. In the case of Mr. Pyle, I know meetings have gone on where we've evaluated the show Big Kid, Little Kid and we talked about the host and the production assistant and

different things pertaining to the show.

Q When you say, we who do you mean?

A We -- Dave Beddow and/or myself.

Q Were the producer/directors there at the time?

A I said Mr. Pyle was there.

Q He was there?

A Yes.

Q Do you ever hold meetings to discuss what your programming for the next fall season is going to be?

A Well, I came to the station last year in late May; and all of the fall programming decisions had been made as they are traditionally done a little earlier than that; you know all of the things had been secured and I was basically inheriting somebody's else department; so there were very few decisions being made; those few that I did make, I dismussed with people; and I recall discussing some with producer/directors, as they might relate to some of the prime time access shows and certainly with some of the news shows which Mr. Pyle, as I said on the one occasion we discussed what we could do to make the show a better show; and we've had quite a few changes in the shows, news shows.

Q That's not what I asked.

A You know you don't come in with a clean slate and design an entire program schedule for 140 broadcast

hours; most of the programming is network over which we have no control as a station other than to elect to carry it or not; like I say, it's like being a relief pitcher, the game has already started, you're not responsible for the whole thing, you know. And, that is the situation I was called in on, on an emergency basis. I'm saying the few decisions that we made relating to some programs or program changes, I do recall conferring with the producer/directors.

Q Do you have anywhere in the company a policy book that sets out specific personnel policies or do you rely only on the contracts that you have, with various unions, with regard to leaves of absences and that type of thing?

A Well, we have, I guess you could call it a policy book; but it does not really relate to that; it relates to the company's own commitments. And, that I have a copy of; but it doesn't really, to my recollection get into things like leaves of absence; it isn't like a legal contract where you've got specifics.

Q When you talk about the company's own commitments and it relates to that, what do you mean?

A Commitments to how many public affairs shows the company would like you to, you know like the NAB Code our company has policies and procedures that have been

followed through the last several, well since the company has been in operation, I would say.

Q You said the company; is that handed down to you from Westhinghouse or do you formulate it yourselves?

A No, that was handed down to the program manager.

Q How do you implement that?

A Implement it.

Q Maybe it's little too broad a question, I recognize; but.

A Well, as I say I came to a station that was obviously fulfilling the obligations of the company; and if the company says produce six public affairs shows a week, we are producing that much. Now some of them might not have been serving the community as much as I would like to; some of them overlooked the needs of minority people; some of them overlooked groups like children where I feel there should be some changes. So, we made some changes within those dictates. You know, I refer to our policy manual once every three to six months just to check to see if there is something in there; it's not something that is, you know, a bible; and I don't remember the last time that I looked at it.

Q You testified that the director has control over what goes out over the air by a virtue of a variety of factors. What about the projectionist; does the

projectionist have control over what goes out over the air?

A I would say no, other than the fact, you know, if you really, really want to get picky about it, on any news show and the director calls for film and the projectionist rolls the film and for some reason while the film is on the air, he decides to stop it -- I don't recall him doing such, you know where it was done on purpose -- in that sense he can affect something that's on the air, you know a live show only; and the only live shows we really do, the purely live shows, are the news shows.

Q Now we have some testimony by earlier witnesses that in the control room is the producer or the news editor?

A Yes.

Q And, a director and an audio man sitting directly behind him; and the producer has a script, and he may tell the director to start the show, or something to start the show. Of course, if the director wanted to he could just push the button for black and there's nothing on the set. In the same vein the projectionist could roll whatever he wanted to, if he was of a mind to do that; there's no control over him at that moment?

A Right, I would say so; also considering that there

are approximately four films on a show, that would add up to a few minutes on one show; now it could vary from two minutes to ten minutes, but I would say roughly five minutes, five or six minutes of film of news shows are pure film. So, it would only be on these occasions.

Q What does the master control operator do?

A The master control operator.

Q Yes.

A I don't...

MR. PYLE: Crew chief.

A Yes, crew chief.

Q Yes.

A I don't know all the things the crew chief does; he doesn't work for me; but I know among other things he follows the log that is put out everyday which dictates some of the numbers for commercials and programs that are recorded and have to be played back and not only does he in the case of a video tape program when there's a playback, he's supposed to check with the video tape operator and say do you have it set up and where is it and feed it into a computer. We've been in the facility for less than a year, and it's a streamlined, computerized sort of a thing; and there have been a lot of changes and there will continue to be so. But, the crew chief does those kinds

of things.

Q Now there are several control rooms as I recall from your testimony the other day, and someone pushes a button which switches the power from one control room, from that control room?

A No, there is a master control room as is the case in most any television station and there are studio control rooms. We have two studio.

Q There are two studio control rooms?

A Yes, there are two studio control rooms.

Q Who sits in the master control room; is that the crew chief?

A The crew chief would be in there.

Q When the 11:00 o'clock news is on the air, is there a studio number that they use?

A Studio B.

Q And, there's another one, Studio A?

A Right.

Q The 11:00 news is on the air; the crew chief if he wants to, could he not, could push a button a put Studio A on the air, assuming that there was somebody in Studio A at the time?

A I'm not that familiarized with what exactly the crew chief can do; I would imagine that he could do that, absurd as it may be; I imagine, I'm not certain that he

can; I'm not a technical wizzard, and I don't know anything about really that part of the operation of what he does. I know what he does in general

Q Now you talked at some length about budgets; so I'll point out, rather than ask the questions, that you had it backwards of what above-the-line costs were and what below-the-line costs were.

A I'm sorry; I told you I was tired.

Q Let's take for example the Marsha Rose Show; who determines the total amount of the above-the-line, or the total amount of the budget for that program for getting guests to come in or for buying equipment or whatever; who determines the total amount of money to be spent on that show?

A A number of people, including myself.

Q And, who else?

A Well, do you want the specifics on the Marsha Rose Show. We asked some people in our program department when we were considering doing the show, and it only started in January, what kind of costs they thought would be involved; and based upon that we made some estimates which several people touched before the final budget was made; and like all budgets, it's not as much as anybody would like.

Q Was that final budget for one show, or is that

for a series of shows?

A It's for the series; it's for the series.

Q How many shows?

A Well, there are five a week, plus there's also a prime time half hour version; and the producer has X-dollars and is responsible for maintaining the show and keeping on budget.

Q You say among the people -- well, let me ask this first. The over-all budget for the program, that's for the series?

A I said for all the programs for the year.

Q And, several people determined that?

A What the total figure is, right.

Q How much of a role does the producer/director of that program play in determining the total budget?

A Well, at the time we were formulating the show, we had another show on the air with personnel who left when that show was finished; and one particular person, the producer/director, who was on the show was consulted about you know what the costs were; as a matter of fact that same producer/director was consulted in great depth by me. And, in August and September when we changed the McLean Show he was on, the time period and how much money he needed and everything else; and it was one of the rare opportunities I was able to come up with what

he wanted.

Q Was he on the staff as a producer/director?

A Yes, he was on the staff as a producer/director.

Q That's the person you mentioned before?

A Henry Briggs.

Q Now in talking about how much money they need, there's a difference in my mind -- did they need money to bring guests in and things like that?

A On the Marsha Rose Show or the McLean?

Q On the Marsha Rose?

A Yes, they might need, we have a very modest, a very modest budget because on shows like Mike Douglas and Johnnie Carson, you know it's on a scale basis of only a few hundred dollars; so ours is even more modest. And, some guests, the minority of the guests will receive some sort of a consideration which might just be travel expenses, you know Metro Liner tickets down from New York.

Q You said Susan Horowitz is the producer/director on that show?

A Yes.

Q How much authority does she have to commit money; can she pay guests whatever she wants; suppose she has a chance to get President Nixon on her program, could she pay him?

A Well, he wouldn't.

Q I used an absurd example. If she had a chance to get somebody who was really sought after, could she pay that person a large fee to come on the show out of our budget as long as she took it out of other areas to make up?

A Well, like I said the budget for any local show is not that big; so if Marlon Brando is willing to do a show for $50,000.00, which may be worth it for a national show, and he would do it for us for some reason for half that, we don't have the budget to cover that; that's not realistic. But, to answer your question more directly, she does implement her budget by herself and has discussed with me on one occasion, and only on one occasion, a recent thing where the host of the show was out of town and what kind of money in general I thought was reasonable as a former talk show producer to pay substitute hosts. Other than that, you know I see it when I see the bills.

Q What kind of bills have you seen, though; have you seen out-of-pocket expenses for train fair?

A I saw a bill, what it was for I can't recall at this moment, but it was within the last two weeks; it was for between $400.00 and $500.00 which was a fairly large one, and we can't afford it; and I know I was

unhappy about it; and I talked to Dave Beddow. I would say the bills would vary anywhere from a few dollars to several hundred dollars.

Q All right, still but what I'm asking for; all I want to know is what are the bills for, specifically?

A The bills are for transportation, it could be for lodging or meals, it could be for any type of props -- books, records; it could be guest honorariums, and it could be some other things.

Q Aside from guest honorariums, all you've been mentioning are expenses, expenses incurred in getting someone there or putting someone up. Now how much leeway does the producer/director have in determining the guest honorariums?

A I'm saying other than the host, I don't ever recall discussing with the present producer, nor the former producer of that talk show, what they paid a guest, you know in advance of when we've done it; there were one or two cases with Briggs where afterwards I'm signing the bill for several hundred dollars, and I wanted to know how come he could do that, you know where was it in his budget; and he said I'm O.K.; and we obviously paid the person. I never said you can pay guests that much, or we don't have any kind of a scale or any system; and as I say the vast majority of the

guests on any talk show, particular a local one, don't receive honorariums.

Q Who determines if they do -- the producer?

A The producer/director, Susan Horowitz. We don't have the time to sit around and figure out whether we want to pay for Metro Liner tickets. I'm an administrator; I don't produce programs; so she would make that decision.

Q You testified sometime ago that the crew chief makes sure things follow the log, somebody makes sure that things follow the log?

A The crew chief, I did say.

Q Who makes up the log?

A The traffic department in concert with you know a lot of people -- the sales department, the public affairs department, you know which would relate to me, and their continuity acceptance thing; so it's the traffic department that does it.

Q Suppose someone has, suppose a cameraman has a problem or a projectionist has a problem; who do they go to to make sure someone comes to fix it when the camera breaks?

A Well, this has nothing to do with the log.

Q No, no.

A The log is just programs and commercials.

Q Suppose a camera breaks; what does the cameraman do?

A That's a piece of technical gear; so he would go to the member of the engineering department, probably the maintenance man, and report it.

Q Does he need permission to go to the maintenance department?

A Of course, not; I mean if you come out on a show and the camera is not working -- first of all, we're not in the building all the time; and he's going to report it, you know, hey, camera one is down; I've got a show in a half hour; get it fixed.

Q Suppose it's not a half an hour, but suppose it's five minutes, suppose the camera breaks five minutes before the show goes on the air; what does the cameraman do?

A Well, he'll try to get the camera fixed;sometimes a camera will go down during a show; I can't myself ever recall being told by a producer/director that a piece of gear was not working, like a camera, and asking me to ask someone else to get it fixed. I assume that in a case where a camera is breaking down and the director sees it's going down during the show, he's going to tell engineering that he wants it fixed.

Q But, the cameraman doesn't have to ask the

producer/director's permission to get it fixed?

A He doesn't have to ask his, no, he doesn't; he doesn't have to; he would generally communicate that it's down, you know we have a camera down and you may not have a camera during the show; and if it's during the show, he can say what do you want me to do.

Q What other producer/directors have the authority to pay guests; do any other ones have that authority?

A On specials a few of them have related to paying people things; and in those cases the producer/directors have been involved in that; but we don't do that many specials and not all specials involve paying people money, but there have been some.

Q As a general practice aside from the Marsha Rose Show, do the producer/directors have money to pay guests?

A Well, other than the Marsha Rose Show, few shows have out-of-the-pocket budgets; so, therefore, there wouldn't be such a case; where there are budgets, the producer/director is responsible for it.

MR. GORDON: Can we go off the record for a second?

HEARING OFFICER: All right. Off the record.

(discussion off the record)

HEARING OFFICER: On the record.

Q (By Mr. Gordon) You testified that producer/directors have quote "direct control of the show"?

A What show. A news show, are you talking about?

Q Any show?

A Yes, direct control over the people on the show, you know on the crew for the show.

Q Can a producer/director tell a cameraman to go home during the show?

A He can. I don't know why he would.

Q The producer/director has the authority to suspend for the rest of that program a cameraman?

A The producer/director can -- well, suspend to me is not an apt phrase as far as that goes; there are many times outside of news when you're using or you're basically taping a one camera show and the other camera is just shooting some visuals; and you've used your visuals at the beginning of the show and you're not going to use that cameraman anymore; so the producer/director very well might say, Camera Two, you know cap your camera and take a walk for a half an hour or you can sit around the studio; you don't have to be here. You know producer/directors are individuals, and that's what I think is one of the appealing aspects of the job; and there aren't hard and fast rules that everybody must adhere to; they're not robots. So, you

know it's up to the guy; but in that case I wouldn't use the word suspend, but they can tell the guy to take it easy. And, I have witnessed occasions in the station where, as the contract states it, calls of nature have occurred for people who are on the crew; and since they don't necessarily know where we are in relation to going on the air, they've asked the producer/director, hey, do I have time for five minutes or two minutes to go to the John; and the producer/director at least on one occasion that I can recall said, no, you don't; you know we've got tape rolling upstairs and just stay where you are; and a lot of times they'd say yes you can go. So, within that content he can tell them what to do.

Q Can a producer/director throw a cameraman out of the studio if he gets mad at him during a news show?

A Can he tell him to get out.

Q Does he have the authority to say, Camera Three, cap your camera, get out of the studio, I won't work with you any more?

A Well, you're asking me what if; like what if I were ten feet tall.

Q I'm asking...

A Yes, you are.

Q I'm asking you do they have that authority?

A Yes, I consider that he has the authority, right;

but you know it isn't something that one would expect in a professional station; it would not occur. If he's got a problem, since the cameraman works in the program department, and at that time under the supervision and control of the producer/director, if the guy wants to throw him out for some good reason, I would assume that he could say, hey, get out of the studio; maybe the guy is drunk or something or there's a problem.

Q Well, I'm not talking about drunkenness or...

A Well, then that's never happened to my knowledge since I have been at the station, so you are talking about an extraordinary circumstance. Why would you want to throw someone out of the studio?

Q Do they have the authority?

A They have the authority if there is some kind of a major problem which has not occurred while I've been at the station. Why would they want to throw someone out of the studio?

Q Well, they might not; that's not what I'm asking. Have you given them the authority to use their own discretion as to whether they want to work with a particular cameraman?

A The producer/director is, supervises that crew; if he feels that for some reason he wants to ask a cameraman or tell a cameraman to get out of the studio,

yer, I would say he's authorized to do so; and as the guy responsible for the show -- you know I must underline that this has not happened since I've been at the station, O.K. -- but, if it would happen, I would expect that the producer/director would immediately report to someone like myself and say, this happened and here's what I did; and we would discuss it after the fact. If he wanted to talk to me before the fact, he could. But, we're dealing with a very hypothetical situation.

Q In the control room is the producer/director, a news editor, an audio man. Can the producer/director tell the news editor go down on the [redacted] pick up that piece of paper; there's a piece of [redacted] on the stage; you go down and pick up that piece of paper?

A Well, there's no stage; but jurisdictionally a news editor is not allowed to do that; it has to be a member of Local 804. So, he couldn't ask him to go down; he'd have to ask a member of 804 to do that which he would do.

Q But, he couldn't ask the news editor?

A No, because he's not a member of the union; he could ask the news editor to do it, but he's not allowed to do it; he's not allowed by union agreement. I couldn't

do it either.

Q Suppose, could the producer/director turn to the news editor in the control room and say, this place is filthy, clean it up?

A Any individual can say whatever he wants; we have a maintenance staff; I don't know why he would say that to the news editor.

Q Could he order the news editor to do it?

MR. BRODERICK: I'm getting confused; is your question can the producer/director order the news editor to clean the control room?

MR. GORDON: That's right.

A Can he. As I said any individual at our station can ask anyone to do anything; they don't have to listen. Of course, the news editor is not a member of the maintenance staff. Why would a producer/director of sane mind ask a news editor to clean the control room.

Q (By Mr. Gordon) Could the producer/director ask the news editor to rewrite the script?

A Under certain unusual circumstances, he could; but that does not usually happen.

Q Under usual circumstances, could he tell the news editor he didn't like the script and he wants it rewritten?

A No.

Q When you testified that the producer/directors are in direct control of the show, you gave a lot of things that they do, a lot of indicia of their control; you said that they tell the cameraman to move from left to right and a variety of things; but all the things you gave were artistic things. Tell me something that shows that they're in direct control of a show that's not artistic?

MR. BRODERICK: I object; he can characterize it in argument how ever he wants to characterize it. We don't think it's artistic; if he thinks it's artistic, that's one thing. Tell him to ask his questions without argument.

HEARING OFFICER: Objection sustained. I think you can ask him a more direct question.

MR. GORDON: You're right.

Q (By Mr. Gordon) Does the producer/director have the authority to tell -- well, he doesn't have the authority, does he, to pick the cameramen with whom he'll work?

A As I stated earlier and repeat it, he can determine who does what on the assigned crew.

Q But, he can't assign the crew?

A He does not assign the crew; he has the power to recommend; and as you saw on our second exhibit, many

times verbally and many times in writing, there have been recommendations. Sometimes we have followed through on those recommendations; other times it's impossible.

Q When the crew is assigned to work on the 11:00 o'clock news, is there a list of say six people, I think that's what you testified, and then the producer/director chooses among them as to who are going to be cameramen and who is going to be a prop man, or are they assigned specific categories?

A Do you mean is there a piece of paper which says Smith is on camera and that one is one something else.

Q Stage manager; Jones is going to be stage manager?

A Generally in the case of news, you know which is a repeated show, everyday you're doing it, guys get used to doing one specific job; so I think you know that a job function might be listed next to the guy; but there are a number of cases where they are changed, you know because I think everybody would agree that if the same crew is doing the 11:00 o'clock show every night and the guy is extremely proficient on camera and he's happy doing it and the director is happy with him doing it, you know why change; but there are changes.

Q Is it stipulated on the schedule that the prop man

is going to be the prop man and the stage manager is going to be the stage manager; that an individual is going to be stage manager; is that stipulated in the schedule?

A I honestly don't know; O.K.; I'm saying that I think that they may have a job function next to the guy; it doesn't mean anything because on many shows, I have been there -- not news -- like you know one time only shows where for some reason the director would like to have a stage manager on camera and a different stage manager; he can change that. You know a show that repeats everyday, week-after-week, if the guy has been running camera for three years and everybody is happy with him, why suddenly change. So, it is not a direct order that has to be that way; it's just to put a guy's name next to a function to fill in the blanks.

Q Now you testified, there's been a lot of testimony in fact that sometimes a producer/director won't like someone on the crew that he's working with; in fact, we may have even discussed their names.

A Some of their names.

Q Would you please give me or give the record an example of when a producer/director has asked for a change of a crew member and where that change has been made?

A You're just talking about changes now, not reprimands.

Q If you want to give me an example of a reprimand, fine.

A I'll give you an example of both; first the reprimands. There are a number of individuals, two stage managers for instance, whom several directors, including Mr. Pyle, have complained about; when they have complained about something that has been terribly wrong, those people have been severely reprimanded and in some cases at least temporarily rescheduled; one is Andy McKay who was mentioned before and another is a gentleman by the name of Sil Moscufo. Another example where a person was reassigned as recommended by a producer/director that I can recall right now was a man who came back from a long illness by the name of Dan Stevens; and he was lighting, I think, a news show and was so out of practice that he was put at a function that he couldn't handle and there was a very severe criticism by the producer/director involved; and the next day he was off that crew and that function; he's doing maintenance and since then has basically been doing that.

Q Well, were the producer/directors the only people who complained about the performance of these people?

A Well, in the case of Stevens, the only person I

heard it from was, well I should say the first person, I don't know, but afterwards everyone seemed to agree that we almost didn't get on the 11:00 o'clock news on the air. I heard it, I think, from a piece of paper from the producer/director; that's where I heard it; and based upon that I asked Dave Beddow to talk to the producer/director and at the producer/director's recommendation, we made an immediate change.

Q Who was the producer/director and how long ago?

A I believe it was Dick Pyle if he was doing the 11:00 o'clock news at that time; it might have been before Pyle's time. It was Bob Lodner; he didn't normally do the news; so he must have been filling in for somebody.

Q Has a producer/director ever recommended that anybody be discharged if you remember?

A Not to me that I can recall ever since I've been at the station. Discharge is something that is clearly outlined in the contract, and a person has to be tremendously insubordinate or something else; it has to be a gross problem; otherwise you can discuss with people, but it's pretty hard to fire.

Q On the 11:00 o'clock news you testified that Dick Pyle is the producer and director?

A No, I didn't say that; I said he was the

producer/director assigned to that show; and as I also mentioned earlier, these guys are a group of individuals and each show is an entity onto itself. I would say to clarify that in some shows the vast majority of what one does might be more the producer function which goes hand in hand with directing and in some shows he might be doing more directing.

Q Which does Mr. Pyle do if you know on the 11:00 o'clock news?

A I would say he's more of a director than he is a producer.

Q You talked about the program Seven Days and Mr. Schmidt as the director. Does Mr. Schmidt have the authority -- as I remember the show is a number of news films or a series of news films?

A Yes, you know that's generally what it is.

Q If Mr. Schmidt took a camera and went out on his own and filmed something, does he have the authority to put that piece of film into the program; does he have the authority to buy from some other source a piece of film to put into the program?

A We don't buy news film from other sources at the station.

Q Could he put a home movie in that program if he chose to do so?

MR. BRODERICK: Excuse me; could I interrupt you for a second; I don't know what the question is; we've had buying, we've had going out and shooting his own home movie. I'm confused. What are you asking?

Q (By Mr. Gordon) Does Mr. Schmidt have the authority to put into that program pieces of film other than those shot by the talent?

A Yes.

Q He does?

A Yes, because not all of the film is shot by the talent that goes into that show.

Q Who shoots the rest of it?

A Well, they may use a film that -- Seven Days is a news review show that reviews what happened in the past seven days and also uses feature stories; so not all of the stories are produced by one person; and as a matter of fact on the show that preceded Seven Days, you know that was retitled as Seven Days, On The Rare Side, Mr. Schmidt was both producer and director, purely, for a period of time in which he was making every possible decision; but you know what I have said many times which is most relevant is that each producer/director is an individual and each show of itself is an entity onto itself. If you're assigned to only direct a show, then you only direct a show; if you are assigned

to go out on remote location, as Schmidt was On the Rare Side, he did that. In this case he doesn't do that; he does other things for us as well as that show.

Q On that show the talent is also the producer, is that correct?

A I guess you could say that's true.

Q Does the talent/producer or whatever you want to call him...

A He's not the only producer. I consider Schmidt the producer/director on the show; I mean he's selecting what goes into some of the film pieces that go on the air.

Q Say again, please.

A Mr. Helsel, who is the host, the producer of the show, you know you have asked me and I have said, I can acknowledge that; when he is out in the field, he is out there by himself; so, he's asking his own questions; he might say to the film guys, you know shoot this for me and shoot that, and he may not. He then hands his film over to Schmidt, and Schmidt will decide you know how the film goes; and he doesn't say three seconds of this shot and one second of this shot which is one minute and four seconds into the reel; Schmidt is exercising judgement which he acknowledged in his testimony, artistic judgement and technical judgement.

So, I also consider him as producing the show. If all he did was show up in the control room and just direct the show, then he would just be a director. I consider that part of production; he's making management decisions; he's deciding if something should be put on the air; and he is supervising a film editor as he said he was.

Q Other than the film given to him by the producer, does Schmidt have the authority to use any other kind of film from other sources; let me withdraw that question.

A I think I answered that before.

Q All right, now the program Speak for Yourself, on the credits, is it true that Mr. Herring is listed as Technical Director?

A I haven't seen the credits.

Q Is he in fact the technical director?

A. Yes, I would imagine that he would be listed as technical director.

Q And, Mr. Beddow is listed as executive producer?

A It's Westinghouse policy that all shows produced at a station, the executive producer, credit is given to the executive producer unless a specific exception is made; all Westinghouse stations. Like my name has never been on the credits that I can recall as a

producer; maybe it was on one exception on a special, but I can't recall. So, it's just a matter of policy.

Q O.K. Going on to this, I forget what it's called, but it's Employer's Exhibit Number 2; is this type of report submitted by every producer/director?

A Do you mean on news shows.

Q Yes.

A I'm not exactly sure; I know Pyle does them on a daily basis for the 6:00 and 11:00.

Q Do you know why he does them?

A He does them because we hired him for his experience, because he was involved in a number of things in news, we trust his judgement, he has helped the shows, we value his judgement, we like to know how he sees the show from the key position of being in the director's chair.

Q What about the other directors; they don't hold a key position?

A You're comparing apples and oranges; I don't know if the guy who does public affairs is more important than the news director; I wouldn't want to say who is more important in that way.

Q Does the director on the 5:30 news?

A I'm telling you that I don't know if the producer/director on the noon and 5:30 show files reports.

If you told me he does, I wouldn't be surprised. As I stated, we have had a problem with that individual; that is why he was taken off the two key shows at 6:00 and 11:00 and Mr. Pyle was put on them, because he is an excellent director.

Q Now you testified that Mr. Pyle has made comments with regard to employees who are still on their probationary period. Has any employee about whom Mr. Pyle made a comment been discharged because of the comment?

A I'll try to answer it this way, because I don't know if I fully understand your question, when we evaluate someone who is under probation, this would generally be a union member, we get many opinions; I think I recall one on a film editor for instance and several comments other than those that were on these pieces of paper that were made by Mr. Pyle that were followed up on; but what I'm saying is no one, I don't make the decisions unilaterally and neither does anybody else. If Pyle says this guy is constantly editing terrible news film, I would take a close look at it; and I would assume that he's right. And, he has made statements about people, negative statements about people who have turned out to be terminated and positive statements about people who have been kept; but

you know not based upon his single recommendation have we necessarily done those things.

Q Who was terminated?

A Who was terminated?

Q Yes.

A I would say on the six month probationary periods that four or five film editors that we had problems with who were primarily news film editors, they were terminated; I can't remember all of their names. There was at least terminated for a time, that I recall, a Mr. Longo. I would have to check my records to get all the names straight because you know if you're terminated for instance during the [illegible] probationary period, after a certain period has transpired, you can be brought back as a temporary person and the probation starts again. So, that has occurred.

Q Is Mr. Longo now employed by the station?

A Longo is supposed to come back -- on, he isn't, because we have a strike; but he's supposed to come back as vacation relief.

MR. GORDON: I'd like a five minute break.

HEARING OFFICER: All right. We'll take a five minute recess.

(A five minute recess was taken)

HEARING OFFICER: On the record.

Any further questions of this witness, sir?

MR. GORDON: Some.

Q (By Mr. Gordon) Do the producer/directors have the authority to grant leaves of absence?

A No.

Q Do the producer/directors have the authority to make up work schedules, assignments?

A I've explained that they can determine who does what on an assigned crew, and in special cases where you have a show like the Marsha Rose Show the producer/director assigns the work schedules of the staff working under that person.

Q Have you ever personally told any of the producer/directors that they have the authority to change the assignments of the people on the assigned crew?

A I don't understand what you mean by change assignment.

Q Well, you say there's an assigned crew to the news program, for example; and you say that the producer/directors have the authority to rearrange people in that assigned crew; make the cameraman the stage manager and vice a versa. Have you ever told the producer/directors that they have that authority?

A It's the standard operating procedure of the station.

Q If a cameraman is going to be out sick, does he call the producer/director to tell him that he's going to be out sick?

A No.

Q If he gets sick while he's working, does he ask the producer/director to go home early?

A I would imagine he would ask the permission of someone.

Q Would it be the producer/director?

A It could be. It matters. It could be.

Q Pardon.

A It matters. It could be.

Q If the cameraman wants to take off a half a day for personal business, does the producer/director have the authority to let him do that?

A No.

Q I assume that the producer/directors have no authority to hire job applicants? And, hire new employees?

A Why types of employees.

Q Any type.

A Under some circumstances, yes.

Q Under what circumstances could they hire an employee?

A Well, one example would be with the Marsha Rose

Show; the producer/director on the show hired the staff.

Q Now you testified that some people, some producer/directors primarily direct and some primarily produce. For example on the news program, you testified that Mr. Pyle primarily directs; does he do any producing on the news show?

A I think so, yes.

Q On the Marsha Rose Show, does the producer/director primarily direct or primarily produce?

A Do you mean Susan Horowitz.

Q Suszn Horowitz.

A Primarily produces.

Q Aside from Susan Horowitz, do any of the producer/directors have the authority to hire employees?

A I say under special circumstances, I would say yes; but under normal practice they wouldn't hire people.

Q What are the special circumstances under which they could?

A Well, we have hired people when we have done special programs; we might look for someone to do research; we might want to hire talent; we might want to rent something like a prop and they'll say, ghee, I know where there's a statue that would be great to open up on. So, they would be spending money on that.

Q Are there any other examples of hiring; do the producer/directors have the authority to say, you're hired and thereby committing the company to putting this company on their payroll?

A Well, I've outlined a couple of cases where that would be true.

Q I only see one, and I said aside from...

A I said the specials, when we do specials sometimes we might hire the services of somebody.

Q Yes, and can you give me an example of where that happened?

A On a special where somebody was hired.

Q Yes, by a producer/director?

A I can't think of any at this moment.

MR. GORDON: I have no further questions.

HEARING OFFICER: Mr. Broderick?

MR. BRODERICK: I have no redirect examination.

HEARING OFFICER: I have a couple of questions.

EXMINATION

Q (By Hearing Officer) Do members of the crew, they are members of a labor organization -- I.A.T.S.E.; is that correct?

A Yes, the standard crew; that's what it is.

Q They have a collective bargaining relationship with the employer and a collective bargaining agreement.

Are you familiar with that agreement?

A Yes, I am.

Q Does that contain a grievance and arbitration provision?

A Yes, I believe so, yes.

Q Do they have union stewards?

A Yes.

Q If an employee goes to a steward and grieves something that he is dissatisfied about, to whom does the steward carry the grievance?

A I would say it would generally go to the general manager and if not the general manager, it might be delivered to the business manager; but I think it's always written to the general manager personally.

Q Is the grievance presented at anytime to the producer/director say on a news show?

A An actual filed grievance.

Q Yes.

A Not to my recollection.

Q Some questions about fringe benefits enjoyed by the producer/directors as compared to other management people; let's put it this way. Do producer/directors receive paid holidays, holiday pay?

A No.

Q Do they receive vacation?

A Yes.

Q What amount of vacation do they receive annually?

A They get two weeks a year, and I don't know if there are any other, any exceptions to that.

Q How does that compare say to the production manager's vacation?

A I'm not exactly sure how long a production manager's vacation is. He's been with the company for twenty years; he gets more vacation than they do. But, you know vacations and holidays put together, he would get more; I don't know if he always gets to take it; but you know he's allowed more.

Q It's available for him?

A Yes.

Q Do the producer/directors receive health insurance benefits?

A Yes, they do.

Q Do they pay for these benefits themselves?

A Well, my recollection is that there is a certain amount that any management employee gets; that's free; and there are options to get more, like major medical for the whole family. So, it would differ from person to person according to how much coverage they wanted.

Q Is this the same for all employees of the company except those that are represented by a collective

bargaining agreement?

A I'm not sure. All I do know is that the benefits that the producer/directors get and other members of management get are the same; you know their options are the same.

Q Now there was some question about, questions raised about the budget of various shows; and how much a show would go over the line; is that correct, how much it would go above its normal budget, in excess of the budget; let's put it that way.

A Right.

Q What has been the maximum amount, let's say, in one week's time of an excessive budget for a show; is there any way...

A I honestly couldn't come up with an accurate figure.

Q What would be the average amount of excessive budget for a particular show?

A Well, you know I would like to think in the average case, we just wouldn't be over budget. We don't account by a week-to-week basis; that's why, you know, your question would be difficult; even if we did, I might not be able to recall specifically.

Q How would you do it -- over a yearly basis or over a seasonal basis?

A No, I would say monthly would be the shortest period of time that we would have.

Q On a monthly basis, what would be the average budget for a month which the producer/director would have discretion of spending without any other approval of management?

A Well again as I said, that could vary according to the show; for instance...

Q Give us the parameters.

A For instance the way we budget, we don't have a separate line in the budget that says "Marsha Rose Show Budget"; it's mixed in with other budgets; so it might be a master figure of which we apportion a certain amount of money. But, it's a highly involved thing, and the figures are very high, and as I represented most of the expenses in the station in a local production are for standard operating costs.

Q Does the station have rest facilities for the employees like a lounge area where employees can relax and get away from the pressures of the day?

A There is a lounge area.

Q And, who utilizes this lounge area?

A Anybody who works at the station that wants to.

Q All employees?

A All employees, right; everybody.

HEARING OFFICER: I have no other questions. Do you have any other questions?

MR. GORDON: Yes.

FURTHER CROSS EXAMINATION

Q (By Mr. Gordon) What other fringe benefits do the producer/directors get that the cameramen for example don't get?

A Which cameramen are you talking about -- film or studio.

Q Studio.

A It would be hard for me; the benefits available are different benefits; I don't know exactly what the difference is. As I told you, I'm not somebody who looks closely at benefits; and I don't know, you know what the difference between what my own benefits are and what the cameraman's benefits are. I know that there are a few things that all members of the management benefit plan have the option to select that other people don't.

Q Now you were talking about budgets; is the budget for the Marsha Rose Show ever identified as saying they have X-number of dollars to run the show for a year?

A Identified between what and what.

Q Anyplace?

A Yes.

Q At what point does it become identified as opposed to being intermingled with the whole budget for the station?

A Well, when you discuss with the producer/director what kind of dollars you have on let's say an annual basis to deal with to give the producer/director a format to work with.

Q All right, do you know what is the annual budget for the Marsha Rose Show approximately?

A I would rather not say, unless that is...

MR. BRODERICK: Well, can we say, is it over $5,000.00, between $5,000.00 and $10,000.00 or over $10,000.00, between $10,000.00 and $20,000.00.

THE WITNESS: Well, the total budget I wouldn't know because there are so many operating costs that it would be many, many thousands of dollars as a total budget on the show.

MR. GORDON: You know it presents great difficulties to our case; we're talking about a television program where it's alleged that the producer/director has a tremendous amount of authority.

MR. BRODERICK: All right, what I'm suggesting is...

MR. GORDON: Is it more than $25,000.00 a year?

MR. BRODERICK: Is it over $5,000.00.

THE WITNESS: Are you talking about the total budget of the Marsha Rose Show. Yes, it's over $5,000.00.

Q (By Mr. Gordon) Is it over $25,000.00?

A Yes.

Q Is it over $100,000.00?

A I don't know beyond $25,000.00.

Q Could it be?

A It could be $100,000.00; I'm not sure.

Q Do you know the total budget for the station?

A You don't cost account on that basis; so I don't have those figures at my disposal.

Q I understand.

A There are different methods of accounting; the method that we utilize, I don't have a specific figure in mind. The total budget for the Marsha Rose Show over the period of a year could be over $100,000.00.

Q Well, you testified before that you've got to sit down sometime with the producer/director and discuss with her how much money is going to be available; so I assume at some point you have to have a good idea of how much money that is going to be available so that you can tell her?

A Now, you're asking me what the total operating

budget on the Marsha Rose Show is. The vast majority of the expenses on the show are standard operating costs. There's no necessity to really go over that.

Q They're commonly referred to as below-the-line costs. Do you know what the above-the-line budget is, how much money is available for her to pay transportation fees?

A I have an idea, but you know from year to year that varies.

Q I'm willing to accept even a wild estimate?

A Well, you've got me confused; you asked me questions about what the total budget is and I've answered you.

Q All right, the thrust of what your testimony seems to be is that the producer/director of the Marsha Rose Show has effective control over a certain sum of money. I'd like an estimate of what that sum is?

A Well, I would like to say just over $5,000.00.

Q Per year?

A Per year.

HEARING OFFICER: Let me throw out a few questions here. Does the producer/director of the Marsha Rose Show, we now know that she has authority over $5,000.00; is this sole discretionary authority

producer/directors permitted to spend without any overseeing by any other management official of the company; what ballpark figure would that be a week, a month, A year or whatever? Take your time. The question is how much sole discretionary budget is the producer/director permitted to spend in any period of time?

THE WITNESS: On a show like the, on any show or on the Marsha Rose Show.

HEARING OFFICER: Let's take the Marsha Rose Show.

THE WITNESS: That would be according to the decision of that producer/director. Broadcasting is an unusual business where there are key periods or key rating periods and you have to spend more there at the start of the year; and two of the first three months are key periods, so you may be vastly over budgeted as far as looking at it from a month-to-month basis at that point; and you may not spend as much in other months -- out-of-the-pocket expense.

HEARING OFFICER: What has your experience been with this show from a budgetary standpoint?

THE WITNESS: We haven't had any real problems. I have not had very much communication whatsoever with the producer/director on the show as to the budget; we're

staying on budget.

HEARING OFFICER: How about the other shows?

THE WITNESS: Well, the other shows as I've already stated, not all of them have these out-of-pocket expenses; most of their costs are the standard operating costs. In cases where some budget has been involved for overtime, there have been a couple of cases, where more was spent than we would like; and we discussed it with the people.

HEARING OFFICER: And, in the discussion did you request them not to spend as much money in the future?

THE WITNESS: I can think of cases where we said that when we were vastly over budget.

HEARING OFFICER: When I say they, I mean the producer/directors. In other words you advised them not to spend, utilize as much of the budget in the future as they had in the past?

THE WITNESS: That has happened maybe a couple of times since I've been at the station.

HEARING OFFICER: All right.

Q (By Mr. Gordon) How many shows have had a budget since you've been at the station?

A Well, how many shows, I couldn't answer that.

Q How many current shows?

A Well, budgets...

Q Above-the-line budgets, out-of-pocket expenses, that kind of thing.

A Of any size.

Q Any size.

A That would also be very hard for me to say because many of these specials that we've had, which you know are hard to recall, have had budgets.

Q I mean the usual day-to-day programs, not specials.

MR. GORDON: Let me withdraw that. Mr. Hearing Officer, you see my problem is this; we have some testimony, and I'm in doubt as to its real relevance but we've had some elaborate testimony about the authority of this producer/director at least to spend money; and the only testimony is that it's somewhere above $5,000.00. Now it may be a minute point, but if it's forty times $5,000.00 that's of some significance; I don't see why it's important that that figure be kept confidential if they know it.

MR. BRODERICK: Do you know the precise figure?

THE WITNESS: I don't know the precise figure.

MR. BRODERICK: Can you give us an approximation of what the precise figure is for the out-of-pocket budget for the Marsha Rose Show?

THE WITNESS: Yes, I think I can give you an approximation.

MR. BRODERICK: What is it?

THE WITNESS: I guess it's around $12,000.00 or $13,000.00.

MR. GORDON: I have no other questions.

HEARING OFFICER: Just a few questions to clarify that last answer.

EXAMINATION

Q (By Hearing Officer) This $12,000.00 or $13,000.00; does that represent the entire budget for the year?

A No, not at all, just out-of-pocket expenses.

Q Above-the-line so to speak?

A Right.

Q Over and above what you had hoped to spend for the show?

A Right.

Q And, this show has not been on that long?

A This is since January; the show that preceded it had a budget of over $30,000.00 last year, because it was a more involved show, there was more entertainment on it; and in that case the producer/director had discretionary power to implement that budget.

HEARING OFFICER: Mr. Broderick, any questions?

MR. BRODERICK: Just two.

REDIRECT EXAMINATION

Q (By Mr. Broderick) When you were discussing Mr. Little's vacation versus the producer/directors vacation, the length of vacation is dependent upon the length of service, is that right, with the company?

A Yes.

Q You were asked what benefits the management employee enjoys that a cameraman doesn't. The cameramen are not entitled to participate in the management disability program, are they?

A Not to my knowledge.

MR. BRODERICK: I have no other questions.

MR. GORDON: I have one, more than one.

RECROSS EXAMINATION

Q (By Mr. Gordon) How long have you been with Westinghouse, just two years or at this station for two years?

A A little over two years with the company; I joined the company in April of 1971.

MR. GORDON: All right. I have no further questions.

MR. BRODERICK: None.

HEARING OFFICER: I have none. The witness is excused. Thank you ver much.

(witness excused)

HEARING OFFICER: Any other witnesses, Mr. Gordon?

MR. GORDON: It's his case.

HEARING OFFICER: Starting with you, because I think he's going to rest now.

MR. GORDON: Give me just a moment. I don't need a break.

HEARING OFFICER: Off the record.

(discussion off the record)

HEARING OFFICER: On the record.

Mr. Gordon, do you have any further witnesses?

MR. GORDON: I'm not going to call any rebuttal witnesses.

HEARING OFFICER: Mr. Broderick, do you have any witnesses you wish to call?

MR. BRODERICK: No, sir.

HEARING OFFICER: Gentlemen, we have a stipulation as to the unit description; that is, all staff producers and directors. I would like to just clarify at this time the exclusions. In the off-the-record discussion, both parties agreed that the exclusions would consist of: all other employees, including guards and supervisors as defined in the Act. Is that correct, Mr. Broderick?

MR. BRODERICK: That's correct, sir.

HEARING OFFICER: Mr. Gordon?

MR. GORDON: Yes.

HEARING OFFICER: I don't believe there's much need to review the issue which confronts the Regional Director in this case; it's merely whether or not the producer/directors are supervisor and/or managerial employees as contended by the Company or employees as defined in the Act as contended by the Petitioner.

Is there anything further which any party wishes to present at this time? Mr. Broderick?

MR. BRODERICK: No, sir.

HEARING OFFICER: Mr. Gordon?

MR. GORDON: I have no evidence to present. However, I have a short statement for the record.

HEARING OFFICER: All right, I was going to ask if either party wishes to argue orally for the record. I will grant you leave to make a brief statement if you wish. Do you want to make a statement?

MR. GORDON: I would like to, just for the record. I indicated that I was opposed to the idea of briefs, and they have been permitted; so obviously I will present one; but I think it clear from the weight of the evidence and I would like to state for the record that given the general precept that Congress has set forth, the twelve tests of supervisory status, clearly

the directors at KWY, I think, satisfy none of them, certainly none of the eleven with the exception to the authority to responsibly direct; and I think the evidence has shown that they do not have that authority either. A supervisor directs employees from an administrative and from a management point of view; but telling a cameraman to move from stage left to stage right, the director is not attaching himself, I don't think, to accomplishing the administrative goals of the company. He does have some artistic discretion; I think in my brief I will argue that that is not supervisory status.

I think especially in light of the Board's decision less than a month ago in the Post News Week Station Case, 203 NLRB 91.

The directors at KWY obviously play a key role in the functioning of the station; but as the Board's opinion wisely pointed out, I think that does not make them supervisors; and that is basically our position.

HEARING OFFICER: Thank you, Mr. Gordon. Mr. Broderick, do you wish to argue on the record?

MR. BRODERICK: No, sir.

HEARING OFFICER: Off the record.

(discussion off the record)

HEARING OFFICER: On the record.

In the off-the-record discussion, Mr. Broderick

asked for an extension of time in which to file briefs and accordingly I have granted the extension of time to the close of business June 25, 1973, for the filing of briefs. Is that satisfactory?

MR. GORDON: That's satisfactory to me.

MR. BRODERICK: Yes, sir.

HEARING OFFICER: Thank you very much, gentlemen.

Gentlemen, if there's nothing further, this hearing will be closed.

(Whereupon, at 3:15 o'clock, p.m. the hearing in the above matter was closed.)

Key-Fig. 1

370 a

TO: DAVE BEDDOW

FROM: DICK PYLE

MEMORIAL DAY

371 a

Employer EX. 2

6 PM NEWS

A DISASTER. PROJECTIONIST (KRAUSSE) CHANGED A CK SLIDE TO A SUPER SLIDE ON THE AIR. THE DISPLACEMENT RECORDER RUINED ANOTHER PIECE. CHIRON DIDN'T WORK (OPERATOR ERROR) FOR THE END CREDITS. SHOW WAS LIGHT AND WITHOUT ANY CLOSING CREDITS I WANTED TO BAIL OUT OF THE WIDE SHOT AND GO TO A ID SLIDE....I WENT TO THE ID SLIDE BUT WE MAINTAINED THEME ATC AS THE AUDICMAN HAD ALREADY LEFT (HOFFMAN).

11 PM NEWS

OK EXCEPT FOR MELTZER. I DIDN'T GET A CHANCE TO GET INTO THE BEYSROOM TILL ABOUT 20 MIN OF.....I WAS TRANSFERRING QUINN'S GRANNY SQUAD PIECE TILL ABOUT THEN. IT HAD FOUR STILL FRAMES (EACH HAD TO BE ON A SEPERATE PROJECTOR), VTR PLAYBACKS, AUDIO TAPES, ETC. I STARTED TO DISSOLVE OUT THE BASEBALL SCORES FROM THE BG FILM AND WENT TO ACADEMY SUPERED OVER BG FILM FOR HALF A SECOND. NEW SUMMER RELIEF CAMERAMAN JOHN ? DOES A REAL GOOD JOB.

CRAWLS DIDN'T AIR AND BOTH JORDY AND MYSELF WERE TOO TIED UP TO CHECK ON THEM. MASTER SAYS HE HAD TROUBLE WITH THE COMPUTER, AND WAS UNABLE TO AIR THEM.

5-29-73

TUESDAY

6 PM NEWS

NOT A BAD SHOW....CRADDOCKS ATC WAS TOO LONG FOR HER FILM...ONE SEC OF BLACK ON THE END OF HER PIECE.

11 PM NEWS

CHIRON DIED, NO CLOSING CREDITS ....I THINK ITS JUST A CASE OF SOME OF THE PROJECTIONISTS NOT HAVING BEEN TRAINED ON HOW TO USE IT. KEN CROMERS DOESN'T WORK PROJECTION THAT MUCH AND I BELIEVE IT WAS JUST A CASE OF OPERATOR ERROR DUE TO UNFAMILIARITY WITH THE EQUIPMENT.

GOOD KUSTER WEATHER BIT...

MELTZER THOUGHT HE TOLD VTR TO EDIT THE TWO SPORTS PIECES TOGETHER AND VTR UNDERSTOOD HIM TO SAY TWO SEPERATE PIECES SO THE TAPE WENT TO BLACK AFTER FIRST 20 SECONDS INSTEAD OF CONTINUING TILL :40.

5-25-73

FRIDAY

6 PM NEWS

GOOD SHOW EXCEPT AUDIOMAN - HOFFMAN, OPENED WRONG POT ON SPORTS VTR AND WE GOT MUSIC FOR FIRST 7 SEC.

11 PM

GOOD SHOW, ESPECIALLY CONSIDERING I WALKED INTO THE NEWSROO AT 10 TILL 11 PM. DID THE KIDS SHOW TILL TEN AND TRANSFERR MATT QUINN'S GRANNY SERIES TILL ALMOST ELEVEN. WE COULDN'T HAVE DONE IT LIVE - IT HAD THREE ROLLS OF FILM, SOME STILL FRAMES AND A VTR PLAYBACK IN IT.

TO: DAVE BEDDOW 374 a RE: 11 PM NEWS 5-24-73

FROM: DICK PYLE

MAJOR CREW PROBLEMS AGAIN TONIGHT. LIGHTING MAN, O'CONNOR, TURNED ON SO MANY LIGHTS THAT VINCE COULDN'T SEE THE STAGE MANAGER. ANDY McKAY AS STAGE MANAGER.....HE JUST DOESN'T MAKE IT. HE IS SO NERVOUS OUT THERE THAT HE PUTS EVERY BODY ON THE SET ON EDGE. ROLAND BARNES - HIS SECOND NIGHT AS A CAMERAMAN. THE POOR GUY CUTS FILM TILL 10:45 (GRANEY SERIES) AND THEN BUSTS DOWNSTAIRS TO PRACTICE SOME AS CAMERAMAN. HE REALLY TRIES HARD BUT HE CAN'T DO AN ADEQUATE JOB WITH 15 MIN. PRACTICE. DAVE HARRISON WAS THE OTHER CAMERAMAN, SO NO HELP THERE

MELTZER SAVE VIDEO-TAPE THE WRONG TAPE ORDER AND THEY HAD THE TAPES BACKWARDS TAPE OPERATOR HAD WRONG TIMES ON THE SECOND VTR IN SPORTS, HE CUED IT 10 SEC TOO FAR IN. VTR OPERATOR NOT ON HEADSET FOR OPEN AND MISSED THE OPENING TAPE.

ONE PROBLEM WITH THE CRAWL, IF WE'RE USING IT DURING THE RECORD SESSION, WE HAVE TO STOP DOWN WHILE WE AIR THE NEWS PROMOS.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WESTINGHOUSE BROADCASTING COMPANY, INC., KYW-TV	:	
v.	:	
NATIONAL LABOR RELATIONS BOARD	:	
and	:	
DIRECTORS' GUILD OF AMERICA, INC.,	:	
Intervenor	:	NO. 74-1319

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA	:	
	:	ss.
COUNTY OF PHILADELPHIA	:	

MATTHEW J. BRODERICK, ESQUIRE, being duly sworn according to law, deposes and says:

1. I was counsel for Westinghouse Broadcasting Company, Inc., KYW-TV in the hearing conducted on the representation petition filed by the Directors' Guild of America, Inc.

2. On July 23, 1973, the Regional Director of the Fourth Region of the National Labor Relations Board issued a Decision and Direction of Election in which he rejected the Company's position that the employees involved were either supervisors or managerial employees.

3. On August 3, 1973, I filed with the National Labor Relations Board in Washington, D. C. a Request for Review and Stay of Election.

4. On August 22, 1973, my office was advised by telegram that the Request for Review was denied "as it raises no substantial issues warranting review" but the telegram went on to note that the unit placement of one particular employee should be resolved through the challenge procedure. This telegram was signed "By Direction of the Board."

5. At the time the Request for Review was denied and thereafter, I was unaware that the National Labor Relations Board in this particular case had followed the procedure of delegating responsibility for deciding requests for review to non-Board members, which procedure is more fully set forth in this Court's decision in KFC National Management Corp. v. NLRB, 86 LRRM 2271 (2nd Cir. 1974).

MATTHEW J. BRODERICK

Sworn to and subscribed
before me this 5th day
of June, 1974.

Antoinette Gordon
Notary Public

My Commission Expires:

ANTOINETTE GORDON
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires June 10, 1978

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

WESTINGHOUSE BROADCASTING COMPANY INCORPORATED/KYW-TV, Petitioner	*	
against	*	
NATIONAL LABOR RELATIONS BOARD, Respondent	*	Docket No. 74-1319
and	*	
THE DIRECTORS GUILD OF AMERICA, INC, Intervenor	*	
	*	

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) SS:

DAVID L. TREZISE, being duly sworn, deposes and says:

I am an attorney at law and employed as Chief Labor Counsel by Westinghouse Electric Corporation whose wholly owned subsidiary is Westinghouse Broadcasting Company, Incorporated. I represented Westinghouse Broadcasting Company, Incorporated as its counsel in the unfair labor practice proceeding brought against it by the General Counsel of the National Labor Relations Board that is involved in this Appeal.

As such counsel, I prepared and filed on behalf of Westinghouse Broadcasting Company, Incorporated an Answer to the Complaint in such proceeding on October 26, 1973 and a Brief in Opposition to the General Counsel's Motion for Summary Judgment on January 4, 1974.

At the times I prepared and filed such Answer and Brief and, indeed, until after the publication of this Court's Decision and Opinion on May 8, 1974 in the case of KFC National Management Corp. v. NLRB, ____F2d____, 86 LRRM, 2271, I was completely unaware of the practice of the National Labor Relations Board, as described in that case, in handling Requests for Review of the determinations of its Regional Directors in representation proceedings. Up until that time I believed, and had no reason to doubt, that such Requests for Review filed under Section 102.67(b) of the Board's Rules were passed upon by the Board itself and not merely by one member of the Board.

David L. Trezise

SWORN TO and subscribed
before me this 5th day
of June, 1974.

Jeanne F. Kandsberger
Notary Public

JEANNE F. KANDSBERGER, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires
July 27, 1974

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

WESTINGHOUSE BROADCASTING COMPANY, INCORPORATED, KYW-TV,

Petitioner,

- against -

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

DIRECTORS GUILD OF AMERICA, INCORPORATED,

Intervenor.

AFFIDAVIT OF SERVICE BY MAIL

Index No.

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

DONNA GIGLIO , being duly sworn, deposes and says that she is over the age of eighteen years, that she resides at 64-33 Cooper Avenue, Glendale, New York 11227 , and that she is not a party to the above entitled appeal .

That on the 3rd day of July , 1974, she served the annexed Joint Appendix on the attorney(x) hereinafter named by depositing (a) true copy (xxx) thereof contained in (a) securely sealed, post-paid wrapper(x), properly addressed to the said attorney(x) as follows:

Elliott Moore, Esq.
Assistant General Counsel
Office of the General Counsel
National Labor Relations Board
Washington, D.C. 20570

in the letter box regularly maintained and exclusively controlled by the United States Government at No. 350 Park Avenue, Borough of Manhattan, New York, New York 10022.

Donna Giglio
DONNA GIGLIO

Sworn to before me this
3rd day of July, 1974.

Joseph Warren

JOSEPH WARREN
Notary Public, State of New York
No. 03-9539130
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1976

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